

Chapter 8

How Local Should Politics Be? Santa Monica's District vs. At-Large Voting Litigation

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"When most people think of landmark voting rights cases, places like Alabama or North Carolina, not Santa Monica, usually come to mind. But last month, a judge in the affluent, left-leaning coastal enclave ruled that Santa Monica's system of at-large City Council representation 'intentionally discriminated' against its growing Latino population."

*Los Angeles Times report*¹

Former speaker of the U.S. House "Tip" O'Neill is often linked to the adage, "all politics is local." In April 2016, an attorney named Kevin Shenkman – in conjunction with other associated lawyers - filed a complaint against the City of Santa Monica arguing that its system of at-large elections of its seven city council members discriminated against Latinx residents. In a sense, he was arguing that local politics in Santa Monica wasn't local enough. Santa Monica's city council should be elected by local district.

The Shenkman complaint cited the California Voting Rights Act of 2001 (CVRA) that had been signed into law by Governor Gray Davis in 2002, a state statute somewhat similar to the earlier federal Voting Rights Act. In common parlance, "brief" means short. But Shenkman's complaint led to a shower of back-and-forth legal briefs whose paper consumption ultimately must have felled many trees and whose lower court resolution took three years and ended in early 2019 with a verdict against the City.²

That verdict, at this writing, is on appeal and the appeal itself may well require an additional grove of trees before the costly litigation is completed.

Conceivably, the case could ultimately

reach the U.S. Supreme Court and alter U.S. policies in such areas as voter suppression and affirmative action. But if the verdict stands, it could upend municipal politics in California in ways that go beyond Latinx representation in Santa Monica.

The City of Santa Monica

*When the Sun sets on America,
Where's the perfect place to be?
Santa Monica, down by the sea.*

*Santa Monica song lyrics*³



¹Benjamin Oreskes, "Court battles could test constitutionality of California voting rights law," *Los Angeles Times*, March 9, 2019. Available at <https://www.latimes.com/local/lanow/la-me-ln-santa-monica-california-voting-rights-act-20190303-story.html>.

²The Santa Monica city government posts all filings and decisions at <https://www.santamonica.gov/Election-Litigation-PNA-V-Santa-Monica>. A backup file is at <https://archive.org/details/Aug10thTrialTranscript>. There are over 100 documents posted at this writing.

³Available at <https://www.youtube.com/watch?v=x6CtZ4VkvQ>.

Santa Monica was not always the “left-leaning” town described in the italicized quotation above the introduction to this chapter. Until the 1970s, for example, the City was a significant part of the congressional district represented by Republican Bob Dornan, a predecessor of what much later was termed the “tea party” faction of the GOP. When Santa Monica moved leftwards, Dornan decamped to Orange County and won election to Congress there, retaining his seat until changing OC demographics caught up with him in 1996.⁴

The leftward move of Santa Monica that displaced Dornan and changed local politics was in part tied to the growing population of renters in the City. By 1978, about 70-75 percent of the City’s residents were renters.⁵ When Proposition 13 – proposing a large decrease in property taxes – was on the state ballot in 1978, proponents argued that renters, who don’t pay property taxes, should nonetheless support the proposition because landlords would surely pass on their tax savings in the form of lower rents. But Prop 13, when it passed, neither cut the demand for apartments nor increased the supply. There was no reason, therefore, for rents to go down, and they didn’t, angering renters who pushed for rent control.

Many cities adopted some form of rent control soon thereafter. Santa Monica, led by a political organization – Santa Monicans for Renters Rights (SMRR), adopted especially strict control administered by an elected Rent Control Board. SMRR remains a major player in City politics to this day, although more recently it has been somewhat eclipsed by developers, local public sector unions, and the union representing hotel workers in Santa Monica (UNITE HERE). The leftward shift in municipal politics ultimately led to the derisive appellation “Peoples Republic of Santa Monica.” Still, from time to time after adoption of rent control, more “conservative” (by Santa Monica standards!) candidates sometimes succeeded in gaining representation on the city council by emphasizing other issues.⁶

The stringency of Santa Monica’s rent control policy was substantially reduced when it was overridden by a 1995 state law – Costa Hawkins – that requires, among other provisions, vacancy decontrol. The earlier Ellis Act, enacted by the state legislature in 1986, also weakened Santa Monica’s rent control by allowing evictions of renters by landlords who were withdrawing their properties from the rental market. In any case, rent control is no longer the central issue in Santa Monica municipal politics that it once was.⁷

⁴Dornan was narrowly defeated in 1996 by Democrat Loretta Sanchez.

⁵Robert Lindsey, “In ‘People’s Republic of Santa Monica,’ Voters Turn to the Right,” *New York Times*, April 17, 1983. Available at <https://www.nytimes.com/1983/04/17/us/in-people-s-republic-of-santa-monica-voters-turn-to-the-right.html>; Kousser declaration, filed May 31, 2018. Available at <https://www.santamonica.gov/Media/Default/Attorney/Election/20180531-2.Kousser%20Declaration.pdf>.

⁶In 1983, inroads were made by an alternative faction that emphasized high-handed tactics by incumbent SMRR-backed members. As part of that campaign, a cassette tape was sent to the local electorate featuring a recording of activists describing their campaign practices: <https://www.youtube.com/watch?v=uYPhMvqal4w>.

⁷There was a brief flurry of interest in the rent control issue in 2018 when a proposition appeared on the state ballot that would have repealed vacancy decontrol. (Proposition 10.) But it failed to pass. Proponents of the repeal may mount a similar campaign in 2020 or beyond in which case the rent control issue would again come into focus in Santa Monica.

But the related issue of “affordable housing” still animates local politics as does the problem of homelessness. Santa Monica has been known for lenient or “progressive” treatment of the homeless, depending on your viewpoint. The City’s 2019 census of the homeless counted 985 individuals, a figure somewhat higher in proportion to population than that of the City of Los Angeles which surrounds Santa Monica on three sides.⁸ Radio comedian Harry Shearer used to close his “Le Show” program – which for many years originated from Santa Monica College’s KCRW – as coming from “Santa Monica, the home of the homeless.” Local newspapers often feature stories about crime, often petty crime, by “transients” – generally a descriptor for homeless individuals. And concerns are raised about individuals sleeping in parks and doorways.

For a suburban city with a population estimated at this writing of 92-93,000 people and only 8.3 square miles, Santa Monica receives a surprising amount of attention, both regionally and even nationally. Its battle over rent control, for example, was featured in the *New York Times* in the 1980s.⁹ But you don’t have to go back that far; the *New York Times* also ran a travel guide to Santa Monica in 2010 and a photo essay on Santa Monica High School in 2016.¹⁰ More locally, when Measure LV – a proposition that would have put strict zoning limits on new development - was on the Santa Monica ballot in 2016, the *Los Angeles Times* followed the story, treating it as a possible bellwether for the larger Los Angeles area.¹¹

Measure LV was ultimately defeated after a major and expensive campaign against it was mounted by developers. Nonetheless, it received about 45 percent of the vote. SMRR, it might be noted, was somewhat divided by LV.¹² The LV defeat illustrated the shift in municipal influence toward developers,



⁸Madeleine Pauker, "Santa Monica homeless population grows by 3 percent," *Santa Monica Daily Press*, March 21, 2019. Available at <https://www.smdp.com/santa-monica-sees-little-growth-in-homeless-population/173593>. The 2019 count for the City of Los Angeles was 36,300. See Jill Cowan, "Homeless Populations Are Surging in Los Angeles. Here's Why," *New York Times*, June 5, 2019. Available at <https://www.nytimes.com/2019/06/05/us/los-angeles-homeless-population.html>.

⁹Robert Lindsey, "In 'People's Republic of Santa Monica,' Voters Turn to the Right," *New York Times*, April 17, 1983. Available at <https://www.nytimes.com/1983/04/17/us/in-people-s-republic-of-santa-monica-voters-turn-to-the-right.html>.

¹⁰Fred A. Bernstein, "36 Hours in Santa Monica, Calif.," *New York Times*, October 13, 2010. Available at <https://www.nytimes.com/2010/10/17/travel/17hours.html>; "Inside Santa Monica High," *New York Times*, September 11, 2016. Available at <https://www.nytimes.com/interactive/2016/09/11/magazine/11mag-santa-monica-high-photo-essay.html>.

¹¹Sarah Parvini, "Santa Monica could pass highly restrictive growth limits. Is L.A. next?" *Los Angeles Times*, November 2, 2016. Available at <https://www.latimes.com/local/lanow/la-me-ln-measure-lv-santa-monica-20161027-story.html>.

¹²SMRR's official position was that it "did not support" LV, which is not quite the same as "oppose." It stated that, "SMRR does not support the Residocracy initiative, and instead wants the steering committee, community and City Council to work on a measure requiring voter approval of any project proposed beyond the standards of a City

with their PACs and ability to provide financial support to council campaigns, along with the public sector city unions and the hotel union.¹³ In any event, despite the LV defeat, local concerns about development – often tied to complaints about traffic congestion and parking – remain a major issue in Santa Monica.

Municipal Governance

"(I)n its recent findings to ban market-rate Single Room Occupancy (SRO) developments, planning staff cited their failure to 'promote social connectedness and community wellbeing.'"

Report in *Santa Monica Lookout*¹⁴

Santa Monica's brand of politics is often seen as unique. The City, for example, contracts for a survey of resident "wellbeing." Most cities don't, nor do they worry much about "social connectedness." But like many cities of Santa Monica's size in California, governance in Santa Monica since 1946 is based on a city manager model. There is an elected (part-time) city council of seven members. The council elects one of its members as mayor, but the mayoral position is largely ceremonial and rotates through the council on a regular basis. The mayor doesn't have veto power; he/she has one vote out of seven on the council, the same as the other six members. The mayor does, however, represent the City.

For the day-to-day operation of the municipality, a hired city manager functions as chief administrator. Election to the city council is on a non-partisan basis and is done on an *at-large* basis. That is, the City of Santa Monica, unlike the much-larger City of Los Angeles, is not divided into local districts. City council members can live anywhere in the city and, in effect, they represent the City as a whole, not a particular neighborhood or area.

As is common in at-large systems, there is no primary. Elections occur at two-year intervals. Either three or four of the seven council seats are up for a vote. The electorate can choose to vote for up to either three or four candidates out of whatever number run for election. The top three or four vote-getters are the winners and serve four-year terms. There is no requirement of a majority vote for winners in Santa Monica; there is simply a tally of votes by rank. If a candidate is among the top three or four vote-getters, that candidate is elected.

In contrast, in the City of Los Angeles, elections are held within (fifteen) districts for full-time city council members. If no candidate receives a majority in the primary, the top two candidates run against each other in a runoff election. Los Angeles has a separate election ballot for its mayor and the mayor is not a member of the council.

Although there are managerial positions within Los Angeles' government, the mayor – not a professional hired city manager – is the chief executive and represents the city as a whole. Council members in Los Angeles represent their districts. In a district system, such as that of Los Angeles, it is expected that

Council approved zoning code." See http://www.smrr.org/news/2016_Candidates_Measures.html. In effect, it said it wanted an LV-type policy that was less strict than LV.7

¹³The public sector city unions fear anything that could limit growth and economic activity in Santa Monica, thus indirectly limiting tax revenue. The hotel union sees job opportunities in hotel expansion.

¹⁴Jorge Casuso, "Santa Monica Wins Award for Its Wellbeing Index," *Santa Monica Lookout*, May 23, 2019.

Available at http://santamonicalookout.com/ssm_site/the_lookout/news/News-2019/May-2019/05_23_2019_Santa_Monica_Wins_Award_for_Its_Wellbeing_Index.html.

members of the city council will ultimately look after the interests of the particular neighborhoods they represent with the mayor more focused on larger citywide interests.

Table 1: Results of Santa Monica City Council Elections

Year	Number of Open Seats	Vote Range of Winners
2000	4	12-18%
2002	3	16-19%
2004	4	10-16%
2006	3	18-19%
2008	4	13-19%
2010*	3	17-22%
2010*	2	27-33%
2012	4	10-15%
2014	3	11-17%
2016	4	15-16%
2018	3	19-24%

* Apart from the regular election in 2010, there was a separate election for two vacancies.

Source: City of Santa Monica's Answer to the First Amended Complaint,

<https://www.santamonica.gov/Media/Default/Attorney/Election/20170627.City%20Answer%20to%20FAC.pdf>; Declaration of David R. Adler,

<https://www.santamonica.gov/Media/Default/Attorney/Election/20180329-2.Request%20for%20Judicial%20Notice%20ISO%20City's%20MSJ.pdf>. Results for 2018 are from

<https://www.smvote.org/#CityCouncil>.

A characteristic of California cities – regardless of their governance structure – is that voters often do not pay much attention to municipal politics, unless there is some major issue at the local level. Turnout in city elections is often low. Voters are more likely to pay more attention to higher political offices such as president, senator, or governor. If there are no pressing interests at the local level, name recognition is likely to be an important factor in attracting votes, giving incumbents an advantage. As a result of a sense that incumbents are simply renewed, some local governments have seen term limits enacted through ballot propositions. In the case of Santa Monica, however, no term limits were enacted until 2018 when twelve-year caps on council seats were imposed (although not retroactively). The term limit proposition – Measure TL – received almost three-quarters of the votes.

One consequence of the voting process in Santa Monica is that even the top three or four winners often receive a relatively small proportion of the votes that are cast, as can be seen on Table 1. In the 2018 election, the vote totals for the top three winners (those receiving more votes than anyone else) ranged from 19 percent to 24 percent of the vote. In 2016, the range was 15 percent to 16 percent for the top four. And in 2014, the range for the top three was 11-17 percent.¹⁵

¹⁵Source: <https://www.smvote.org/> and

<https://www.smgov.net/Departments/Clerk/contentOneColumn.aspx?id=26354>.

That these levels of vote totals do not evidence strong electoral support seems self-evident. Name recognition and money for yard signs and mailers are generally key factors in election results. Incumbents tend to be reelected. And it can reasonably be asked if the top candidates in, say, 2014 through 2018 receiving 16, 17, or 24 percent of the votes are truly “winners” in the sense of having a true voter mandate. The question is even more pointed when aimed at the bottom-of-the range “winners” with 11, 15, or 19 percent.

It appears moreover from evidence adduced as part of the CVRA litigation that the pattern of low-percentage winners that characterized the elections from 2000 on shown on Table 1 goes back to the early days of the post-1946 at-large system. One election expert hired by the plaintiffs examined all cases in which there was a Latinx candidate and found a similar low-winning-vote-plurality pattern going back to 1953. The only exception was a special election in 1999 in which only one seat was open, and the winner received 54%. Before that election – at least in all available elections in which there was one (or more) Latinx candidate(s) – the winning range ran from 9 percent to 27 percent.¹⁶

Of course, one can argue that a governance system that produces winners with as little as a tenth of the vote is flawed and yet doesn’t violate the CVRA. The system – sometimes described as “first past the post” – might even be argued to *favor* minority voters. If such voters cohesively backed a candidate, that candidate might well win since relatively few votes are required. Indeed, one expert witness made such an argument, although apparently not persuasively, to the court.¹⁷

Although there is limited oversight by voters, Santa Monica has tended – as a relatively affluent city – to have more civic engagement than other similar-sized cities with similar governance structures. It has not had corruption scandals of the “traditional” type, e.g., outright bribes for council votes or for permits or for favorable inspection results. About the closest thing to a traditional scandal Santa Monica has had in recent years came when a city mayor apparently intervened to block the appointment of a communications officer after the position had been already offered by the city manager.

In that case, the hired/unhired individual – who councilmember and then-mayor Pam O’Connor apparently considered to be a political opponent – sued the city and won a settlement of over \$700,000.¹⁸ But apart from that affair, to the extent that voters are upset with their elected officials in Santa Monica, their concerns tend to be over policy matters and over a perceived lack of council responsiveness.

Some issues that have animated Santa Monica voters might be viewed as minor matters, although not to those immediately involved. *Los Angeles Times*’ former political cartoonist Paul Conrad had donated to the City a large sculpture of a mushroom cloud entitled “Chain Reaction,” and meant it to be a peace monument. The sculpture was erected in 1991 near the Civic Auditorium, but it eventually fell into disrepair. In spite of the peace theme – which might have been expected to appeal to Santa Monica’s

¹⁶Declaration of J. Morgan Kousser filed May 31, 2018. Available at <https://www.santamonica.gov/Media/Default/Attorney/Election/20180531-2.Kousser%20Declaration.pdf>.

¹⁷See Declaration of Daniel R. Adler at <https://www.santamonica.gov/Media/Default/Attorney/Election/20180329-2.Request%20for%20Judicial%20Notice%20ISO%20City's%20MSJ.pdf>.

¹⁸Matthew Hall, “Complaint filed in Riel case,” *Santa Monica Daily Press*, September 1, 2015. Available at <http://www.smdp.com/complaint-filed-riel-case/150357>. Mayor O’Connor – who was again an ordinary city councilmember by the time of the 2018 general election – was defeated in that election. Other members of the city council and SMRR backed another candidate who won.

RESIDOCRACY.ORG

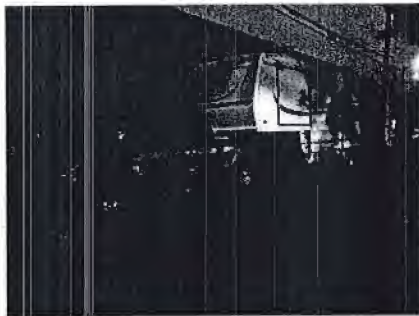
A Community Network of Residents

- together making a difference -

Joined ▾ ✓ Notifications ➦ Share ... More

June 17 at 9:05 PM

City of Santa Monica refuses to take any action on this vehicle despite the fact that our street does NOT allow oversized vehicles, much less double parked cars. This is what makes me fume! Zero Enforcement of issues like this is exactly why the city of Santa Monica is in ruins.



GROUP BY

Residocracy
404 like this

INVITE MEMBERS

+ Free name or email address

MEMBERS 3,243 Members

DESCRIPTION

Residocracy.org is a Community Network of Residents dedicated to... See more

GROUP TYPE

General

LOCATION

Los Angeles
Santa Monica, California

CREATE NEW GROUPS

city council – its members seemed reluctant to fund the maintenance needed despite the appeals of residents. The council gave residents a deadline to come up with needed funds and \$100,000 was raised privately. Only then did the council agree to preserve the work.

Also, in 2014, the council was confronted by residents over what came to be known as the “Hines development,” an elaborate commercial project proposed for 26th Street and Olympic where the then-under-construction Expo light rail would be stopping. A group of residents called the Santa Monica Coalition for a Livable City (SMCLC) filed a lawsuit against the council’s approval of the development on grounds of environmental and traffic impact.

Another group formed around that time called Residocracy and managed to gather enough signatures to put a referendum on the ballot which would have reversed the council’s decision approving the Hines development. In response, the council repealed its decision rather than see a referendum campaign go ahead against its endorsement of Hines (and implicitly against the council itself).¹⁹ Residocracy continued thereafter, largely operating through a Facebook page and a website. It played a significant role in the unsuccessful campaign to pass Measure LV in 2016. However, since that time, its Facebook site seems not to be “curated” and sometimes degenerates into angry, troll-like comments about the local homeless problem and unrelated anti-vaccine posts.

The Shenkman Cometh

Kevin Shenkman, who is tall and bookish, does not look like the aspiring light heavyweight boxer he once was. Clearly, though, he still relishes a good fight. ...Shenkman, 38, ...has been suing, or threatening to sue, cities all over Southern California, demanding they change the way they elect members of their city councils in order to increase the numbers of African-American and Latino representatives. Many have agreed to do so, though some have resisted before capitulating.

*Los Angeles Times report*²⁰

Although the issues of 2014 were raising the possibility of political change through voter protests and direct democracy, the following year raised the possibility of abrupt change through the judiciary. A key

¹⁹Parimal M. Rohit, “Hines DA Rescinded,” *Santa Monica Mirror*, May 16, 2014. Available at <https://smmirror.com/2014/05/hines-da-rescinded/40182/>.

²⁰Robin Abcarian, “Meet the Malibu lawyer who is upending California’s political system, one town at a time,” *Los Angeles Times*, May 14, 2017. Available at <https://www.latimes.com/local/abcarian/la-me-abcarian-shenkman-voting-20170514-story.html>.

element in court-produced change is the California Voting Rights Act of 2001 (actually enacted in 2002 and reproduced in the Appendix B). Like the federal Voting Rights Act, the state counterpart aims at remedying past racially-based practices that hinder minority representation. However, the CVRA has special provisions that make allegations of past and current discrimination easier to demonstrate.²¹ The CVRA is self-enforcing in that it relies on private lawsuits rather than some official commission or inspectorate for enforcement.

Attorneys who file such suits on behalf of local plaintiffs can recover their costs and reasonable fees, which can be considerable once a lawsuit is filed. Thus, a city which resists and loses will have to pay the plaintiffs' attorneys as well as its own legal costs. Under a 2016 amendment to the CVRA, cities once notified of an impending suit move to district voting can avoid large bills if they agree to switch within 135 days of notification.²² Many cities that have received a warning moved to district systems. But one city with at-large voting that fought a CVRA lawsuit aggressively all the way through trial was Palmdale. (It lost and had to switch.)

Attempts to challenge the CVRA's constitutionality have so far been unsuccessful. In one instance, a lower court found the CVRA's use of race was unconstitutional, but the decision was reversed on appeal in 2006. The reversal found that any minority (which could include whites) could make a case under the CVRA.²³ Moves to take the matter all the way to the U.S. Supreme Court have so far not succeeded, but such an effort is underway at this writing. Ironically, these efforts put "progressive" Santa Monica on the same side as groups seeking to weaken racially-based legislation such as the federal voting rights law and the more general concept of affirmative action in higher education admissions.²⁴

CVRA focuses on at-large voting arrangements of the type used in Santa Monica city council elections. Its remedy is typically to move to district voting. The law defines a "protected class" as "voters who are members of a race, color or language minority group, as this class is referenced and defined in the federal Voting Rights Act." It looks for signs of "racially polarized voting," meaning that "the choice of

²¹The League of California Cities has sponsored publications on the CVRA. See Marguerite Mary Leoni and Christopher E. Skinnell, "The California Voting Rights Act," undated. Available at <https://www.cacities.org/getattachment/f736ba74-086a-4f5d-beb7-853d898691d8/LR-Leoni-Skinnell-THE-CALIFORNIA-VOTING-RIGHTS-ACT.aspx>; James L. Markman, "The California Voting Rights Act: Recent Legislation and Litigation Outcomes," Prepared for a conference of May 3, 2018. Available at <http://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2018/Spring-Conference-2018/5-2018-Spring%3B-Aziz-Johnson-Markman-California-Vot.aspx>. See also David C. Powell, "The California Voting Rights Act and Local Governments," *California Journal of Politics & Policy* (2018). Available at <https://escholarship.org/uc/item/031405xr>; Joanna E. Cuevas Ingram, "The Color of Change: Voting Rights in the 21st Century and the California Voting Rights Act," *Harvard Latino Law Review*, June 2012. Available for download at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1836791.

²²Phil Willon, "A voting law meant to increase minority representation has generated many more lawsuits than seats for people of color," *Los Angeles Times*, April 9, 2017. Available at <https://www.latimes.com/politics/la-pol-ca-voting-rights-minorities-california-20170409-story.html>.

²³The decision finding the CVRA unconstitutional, *Sanchez v. City of Modesto*, was reversed in 2006. See <https://caselaw.findlaw.com/ca-court-of-appeal/1250178.html>.

²⁴Bob Egelko, "California Voting Rights Act survives legal challenge, but it's not over," *San Francisco Chronicle*, February 6, 2019. Available at <https://www.sfchronicle.com/news/article/California-Voting-Rights-Act-survives-legal-13592466.php>. The case arose from Poway, a small city near San Diego. The Project on Fair Representation in the Poway case appeal is involved a court case challenging admissions practices at Harvard and supports adding a Census question on citizenship. See <https://www.projectonfairrepresentation.org/>.

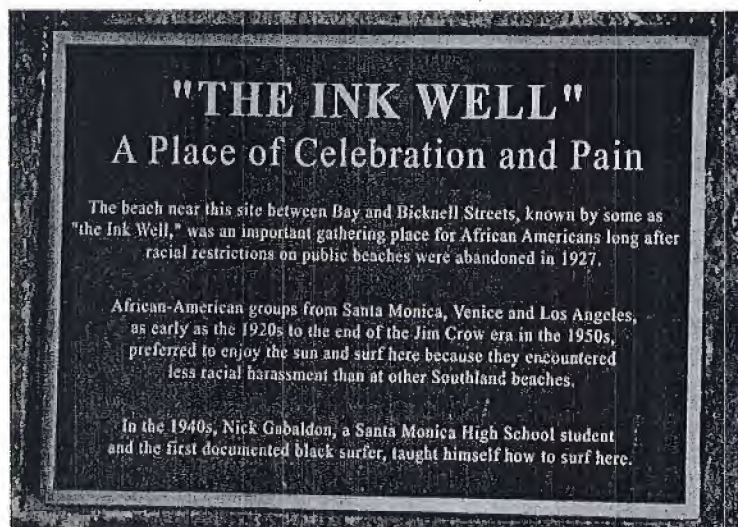
candidates or other electoral choices that are preferred by voters in a protected class” are different from “the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.” If the protected class tends to be concentrated in a particular neighborhood of the jurisdiction, and if that neighborhood were a district that elected candidates, presumably the candidates chosen by the protected class would be more likely to be selected. But in an at-large governance system, where the protected class is lost in a larger sea of voters with different interests, the protected class is hindered in gaining its desired representation.

To win a CVRA lawsuit challenging an at-large system, therefore, the plaintiffs must show that there is racially-polarized voting and that at-large governance is preventing the protected class from seeing its candidates elected. Plaintiffs don’t have to prove intent to discriminate under CVRA. But the law indicates that a showing of past intent can be taken into consideration.

A key factor in a CVRA lawsuit is statistical analysis of past election outcomes. If the historical evidence shows intent as well, the case is strengthened. Thus, plaintiffs will bring statistical evidence to court, typically through expert witnesses, as well as qualitative history such as past statements by city officials. A finding that the protected class is concentrated in a particular area is not required to show racially-polarized voting. However, if the protected class were spread homogenously through the city, switching to district voting would not remedy its disadvantage.

As noted earlier, Santa Monica was not always the “left-leaning” municipality that developed in the late 1970s. As an example, the city once featured a *de facto* segregated beach – known pejoratively as the “Ink Well” – for black residents that persisted as a practice until the early 1960s.²⁵ It’s not that Santa Monica was worse in that era when evaluated by modern standards than other cities with regard to racial issues. But the fact that the city’s current at-large governance system was created shortly after World War II, a period when homes and properties were sold with restrictive covenants and discrimination was not illegal, at least raises the possibility that its decisions on governance structures made back then were not entirely innocent. Whether those voting structures today continue to have discriminatory effects is the kind of question that the CVRA was intended to test.

The test for the City of Santa Monica came in late 2015, when a letter from lawyer Kevin Shenkman was sent to the City claiming that its at-large voting system violated the CVRA. A discussion of the letter was held in closed session at



²⁵A history of the Ink Well may be found at <https://www.blackpast.org/african-american-history/inkwell-santa-monica-california-1905-1964/>; Cecilia Rasmussen, “In ‘Whites Only’ Era, an Oasis for L.A.’s Blacks,” *Los Angeles Times*, July 3, 2005. Available at <https://www.latimes.com/archives/la-xpm-2005-jul-03-me-then3-story.html>. An official Santa Monica plaque commemorates the beach and indicates that it ended in the 1950s: <https://www.smgov.net/portals/culture/Content.aspx?id=20263>.

the city council meeting of January 12, 2016.²⁶ Since the session was closed, there is no official record of what, if anything, was decided.

In April 2016, after the City didn't respond, a lawsuit was filed by attorney Kevin Shenkman and associates contending that the Pico Neighborhood – with a concentration of Latinx residents – was the victim of the kind of discrimination that the CVRA prohibited. That is, the lawsuit contended that the Pico Neighborhood and Latinx voters exhibited racially-polarized voting and that the remedy would be a switch from at-large to district voting in which one of the seven districts would incorporate the Pico Neighborhood. At a special meeting of April 26, 2016, the now-actual (rather than threatened) lawsuit was again discussed by the council in closed session.²⁷

The plaintiffs in the case against Santa Monica included the Pico Neighborhood Association, Oscar de la Torre (an elected member of the Santa Monica-Malibu Unified School District) and his wife Maria Loya. (The school district, whose board – it might be noted – is elected at-large, is a separate entity from the City of Santa Monica and includes Malibu.) Both de la Torre and Maria Loya are on the board of the Association. Loya had been an unsuccessful candidate for city council in 2004.²⁸ De la Torre had at one time been in dispute with the council regarding city funding for the Pico Youth and Family Center which he founded, a dispute which heated up after the suit was filed.²⁹ He also complained about a 1930s-era mural in city hall which depicts a Native American showing a water source to Spanish conquistadors. De la Torre described the mural as demeaning to Native Americans and to “people of color,” and thus symptomatic of city council insensitivity.³⁰ De la Torre was an unsuccessful candidate for city council in 2016, i.e., after the lawsuit was filed.

As for Shenkman, he has certain aspects of the kind of small-firm lawyer who, in Hollywood movies and TV shows, takes on some giant opponent and – when it's a movie or TV show – inevitably wins at the end. For example, in the Amazon TV series “Goliath,” Billy Bob Thornton plays a washed-up, alcoholic lawyer, estranged from his family, who lives in a (real) beachfront Santa Monica motel and spends much of his time in the (real and locally well-known) neighboring Chez Jay bar. Through a series of twists and

²⁶See agenda item 1A(2) of http://santamoniacityca.ig2.com/Citizens/Detail_Meeting.aspx?ID=1054.

²⁷See agenda item 1D of http://santamoniacityca.ig2.com/Citizens/Detail_Meeting.aspx?ID=1080.

²⁸Michael Ashcraft, “Gadfly or David vs Goliath, Maria Loya sues for voting districts,” *Santa Monica Patch*, October 29, 2018. Available at <https://patch.com/california/santamonica/gadfly-or-david-vs-goliath-maria-loya-sues-voting-districts>.

²⁹Ashley Archibald, “SMMUSD boardmember under fire for youth center management,” *Malibu Times*, January 9, 2013. Available at http://www.malibutimes.com/news/article_75fd7750-5a77-11e2-9ea1-0019bb2963f4.html; Niki Cervantes, “Accusations Arise Over Lack of Funding for Santa Monica Youth Center,” *Santa Monica Lookout*, August 11, 2017. Available at https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2017/August-2017/08_11_2017_Accusations_Arise_Over_Lack_of_City_Funding_for_Santa_Monica_Youth_Center.html.

³⁰Jorge Casuso, “Mural at Santa Monica City Hall Gets Airing as Petition for Its Removal Circulates,” *Santa Monica Lookout*, September 15, 2017. Available at https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2017/September-2017/09_15_2017_Mural_at_Santa_Monica_City_Hall_Gets_Airing_as_Petition_for_Its_Removal_Circulates.html.

turns in Season 1, he battles a giant corporation and a big-name law firm for which he once worked. (He wins, of course).³¹

In the CVRA case against Santa Monica, there is no giant corporation – but there is a deep-pocketed city. And that deep-pocketed city hired a big-name law firm – Gibson, Dunn, and Crutcher – for which Shenkman once worked. But there the similarity with “Goliath” ends. Shenkman isn’t a washed-up alcoholic and he lives in Malibu with his law partner and wife, not in Santa Monica. So far, at this writing, he has won his case against Santa Monica, although the verdict is on appeal and, thus, a Hollywood/TV ending is not guaranteed.

A Side Note Before Continuing

*“Both projects are in the Pico Neighborhood, **which activists have long complained has carried an unfair share of low-income projects and social services.** The loan document cites overriding considerations for granting the funds. ‘The proposed development is located in the Pico neighborhood which has historically been served by affordable housing developments. However, given the proximity to transit (both the Expo Line and bus routes) and services, the proposed development provides the increased opportunities... while providing access to transit, and services.’” [Bold face added]*

Report in the *Santa Monica Lookout* on two proposed low-income housing projects³²

Since the introduction to this chapter already has disclosed that Shenkman’s suit was a success at the lower court level and that district voting was ordered – albeit stayed while an appeal takes place – there is an obvious question. If the plaintiffs prevail on appeal and a new system of district voting is installed, would that result be a Good Thing for Santa Monica. Presumably, discrimination is a Bad Thing. But any answer to the question has to depend on what is defined as a Good Thing.

If voting by district is used, might the result be excessive NIMBYism (Not In My Back Yard-ism)? That is, might voters in the separate districts take a too-parochial view of their own interests and resist needed development (if you think more development is needed)? Might the 1946 system of at-large voting – precisely by making councilmembers less responsive to local concerns – produce better decisions from a larger, citywide perspective? This type of argument has also been made at the statewide level with regard to development. It has been argued at that level that the legislature should enact legislation that would override local zoning and thus permit denser development (which is seen as a Good Thing). The local governments, it is argued, even local governments elected at-large, are too-parochial and restrict development in their jurisdictions excessively, thus driving up rents and housing prices.

These kinds of arguments – essentially that too much democracy can/will have negative consequences – ultimately turn on grand philosophical concepts. They ultimately also rest on political predictions on what happens at the local level if a sense develops that decisions are being made on high without input

³¹In Season 2, the character played by Thornton does get entangled in municipal affairs but with regard to the City of Los Angeles, not Santa Monica.

³²Jorge Casuso, “Low-Income Housing Project Slated for Pico Neighborhood Subject of Meeting Tuesday,” *Santa Monica Lookout*, May 20, 2019. Available at http://santamonicalookout.com/ssm_site/the_lookout/news/News-2019/05_20_2019_Low_Income_Housing_Project_Slated_for_Pico_Neighborhood_Subject_of_Meeting_Tuesday.html.

from those immediately affected. What happens when – fairly or not – voters feel that the powers-that-be-on-high are producing undesired results by not responding to local concerns.

Particularly in California with its institutions of direct democracy, the results of voter frustration in such circumstances can be jarring. Ask old-time state politicians who were around in the late 1970s about the taxpayer revolt, the election of June 1978, and the resulting passage in that election of Proposition 13 (which drastically cut property taxes).³³ Or ask former Governor Gray Davis, recalled by voters in 2003 and replaced by Arnold Schwarzenegger who was promising in the recall campaign to “Bring California Back.”³⁴

In any event, as the quote at the start of this section indicates, while low-income housing may be a Good Thing, not everyone in the Pico Neighborhood agrees that more of it should be built *there*. Not everyone agrees with “overriding” such concerns in the name of the greater good. In short, NIMBYism – if that’s what it is – is not confined to higher-income neighborhoods. In poorer, neighborhoods it occurs as well, sometimes taking the form of concerns about potential gentrification, and sometimes – as in the Pico case – about “reverse gentrification.”³⁵

Moreover, there are alternative views concerning NIMBYism, gentrification, and related issues. It has been argued that in the real world, overriding local concerns can produce perverse and unintended results. Suffice it to say, the issue of housing costs, zoning, and state and local policy on housing is complex. It is more complex than many folks want to believe, although evaluating the various viewpoints is off-topic for this chapter.³⁶ In any event, even new residents of Santa Monica who live in recently-constructed developments may not turn out to be proponents of yet more development. They, too, are affected by traffic and congestion, even those who make use of ride-hailing services, bicycles, and e-Scooters. As the saying goes, “the last one in says ‘shut the door; we’re all here.’”

The CVRA tilts toward local representation as a Good Thing, at least when a protected class is otherwise receiving less political voice than it should. It doesn’t guarantee that the results will be to everyone’s liking, or even that protected local residents will get what they want from the process. It doesn’t guarantee that more minority candidates will be elected. It just assumes that in racially-polarized situations, minority voters will have a greater chance with districts to elect candidates they think will represent their concerns than under at-large systems.

Whether or not you think district voting is a Good Thing or a Bad Thing, so far, the CVRA has produced what one study termed a “quiet revolution” in local government by pushing numerous cities to make

³³See <https://www.youtube.com/watch?v=LY6-YVFvtFQ> and <https://www.youtube.com/watch?v=Sm-1Fjpgk4M>.

³⁴See https://www.youtube.com/watch?v=CkE11Egb_7Q.

³⁵Reverse gentrification refers to placing undesirable facilities in a neighborhood such as drug treatment centers, etc.

³⁶Readers might be interested in the views of UCLA Professor Michael Storper. An interview with him can be found in “Blanket Upzoning—A Blunt Instrument—Won’t Solve the Affordable Housing Crisis,” *The Planning Report*, March 15, 2019. Available at <https://www.planningreport.com/2019/03/15/blanket-upzoning-blunt-instrument-wont-solve-affordable-housing-crisis>. The audio of a June 2019 presentation by Storper on this subject can be found at <https://archive.org/details/StorperNENeighbors632019>.

the switch to districts.³⁷ But some jurisdictions have sought to fight CVRA suits, probably the most resistant before Santa Monica being Palmdale (which, as noted above, ultimately lost and had to convert to districts). Santa Monica chose to resist, choosing a very prominent law firm – Gibson, Dunn and Crutcher – to defend its at-large electoral system and a lead attorney from that firm – Theodore J. Boutros Jr. – who has taken high-profile cases to the U.S. Supreme Court.

Although Santa Monica has refused Public Records requests for its expenses up through the appeal, estimates of \$10 million have appeared just for the defense cost.³⁸ If Santa Monica loses on appeal, it will have to pay Shenkman and his associates on the plaintiffs' side as well. In the Palmdale case, apart from its own legal costs of about \$7 million, that city paid the plaintiffs' attorneys, i.e., Shenkman and associates, a reported \$4.5 million plus interest.³⁹

Shenkman has said that some of his earlier settlement money has gone to the Southwest Voter Registration Education Project, a group that encourages Latinx voting.⁴⁰ While a detailed listing of Santa Monica's expenses might well disclose the City's strategy and is thus protected from a Public Records request, Shenkman has said that the City was obligated to hand over the expense total, although perhaps not the details within that total.⁴¹ But from a public relations viewpoint, it is probably to his advantage for the City to be in the position of hiding something from voters. Voters can see his proposed fees and costs from court records, but they are denied access to the corresponding information about the City's expenses.

As an affluent city, Santa Monica can afford very large legal bills, win or lose, an option not available to many other small and medium-sized cities with at-large election systems. But a loss of the appeal by Santa Monica would signal to other cities with ample financial resources that, in the end, even large legal fees can't save at-large systems. It would also suggest that Shenkman and associates aren't likely to be deterred by aggressive and expensive defenses in future litigation against other cities. In essence, it would signal that Good Thing or Bad Thing, the CVRA is a Big Thing that can't be ignored. A loss by Shenkman and associates through the remaining appeal process, would signal the opposite: If a city has the monetary resources, it may overcome a CVRA suit.

³⁷Justin Levitt and Douglas Johnson, *Quiet Revolution in California Local Government Gains Momentum*, Rose Institute of State and Local Government, Claremont McKenna College, November 3, 2016. Available at <http://roseinstitute.org/wp-content/uploads/2016/11/CVRA-White-Paper.pdf>.

³⁸Jorge Caruso, "City Plans to Appeal Decision in Voting Rights Case," *Santa Monica Lookout*, November 13, 2018. Available at https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2018/November-2018/11_13_2018_City_to_Appeal_Decision_In_Voting_Rights_Case.html.

³⁹Mary Plummer, "The Massive Election Change in California You've Likely Never Heard Of," *LAist*, January 2, 2019. Available at <https://archive.org/details/NENeighbors6112018KevinShenkman>.
https://laist.com/2019/01/02/the_massive_election_change_in_california_youve_likely_never_heard_of.php;
Robin Abcarian, "Meet the Malibu lawyer who is upending California's political system, one town at a time," *Los Angeles Times*, May 14, 2017. Available at <https://www.latimes.com/local/abcarian/la-me-abcarian-shenkman-voting-20170514-story.html>.

⁴⁰Meeting of Northeast Neighbors, June 11, 2018. Audio at <https://archive.org/details/NENeighbors6112018KevinShenkman>.

⁴¹Meeting of Northeast Neighbors, January 7, 2019. Audio at <https://archive.org/details/ShenkmanNENeighbors1719>.

Back to our Tale

"The previous system of district-based elections was abandoned and at-large elections were adopted in 1946, purposefully to prevent non-Anglo Santa Monicans... from achieving representation... Since that time, at-large elections have been very successful in achieving... (their) nefarious purpose, dilution of Latino voting power and denial of effective political population."

Initial Complaint filed April 12, 2016 with Superior Court,
County of Los Angeles⁴²

In essence, the quote above is the heart of the case against Santa Monica. The complaint goes on to argue that Maria Loya and others have been the preferred candidates of residents of the Pico Neighborhood but have not prevailed citywide because of racially-polarized voting as defined by the CVRA. It notes that a letter to that effect was sent to the city attorney of Santa Monica who, in an email, said the claim would be discussed by the council.⁴³ Apart from the claim of violation of the CVRA, the claim against the City was also based on the assertion that the existing system of at-large elections violated the Equal Protection Clause of the California constitution by discriminating against non-Anglo voters.⁴⁴

The warning letter contained a copy of a report the city council had commissioned back in 1992. At the time, the council was concerned about whether its at-large system might be viewed as vulnerable to a challenge under the *federal* Voting Rights Act, which – as noted earlier – has a higher bar for proving discrimination than the CVRA (which wasn't enacted until 2002). Back in 1992, the council had reason to be concerned about its at-large system thanks to a man who died shortly before the most recent lawsuit against Santa Monica went to trial.

Joaquin Avila, a voting rights attorney, had begun using the federal voting rights statute to sue California cities over their use of at-large systems which, he argued, discriminated against Latinx voters. Two of his cases went to the U.S. Supreme Court and succeeded in forcing a change to districts. But his most notable case involved Los Angeles County and its five elected supervisors who were in districts drawn in ways that disfavored the Latinx population. Avila forced a switch in the County to a revamped district

⁴²Pico Neighborhood Association, Maria Loya and Advocates for Malibu Public Schools, Plaintiffs v. City of Santa Monica, California; and Does 1-100, filed April 12, 2016, BC616804. Available at <https://www.santamonica.gov/Media/Default/Attorney/Election/Complaint.pdf>. The initial complaint referred also to the Santa Monica-Malibu Unified School District, not just the City, apparently the reason the Advocates for Malibu Public Schools group was involved.

⁴³The letter is reproduced in Exhibit E submitted by the City as the litigation developed. Available at <https://www.santamonica.gov/Media/Default/Attorney/Election/20180329-2-EXE.Demand%20Letter%20from%20Plaintiff.pdf>.

⁴⁴Article 1, section 7 of the California constitution says in part that, "a person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws." See https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=CONS&article=1.

with a majority of Latinx residents in a suit settled (for a reported \$6.3 million) in 1991, i.e., shortly before Santa Monica commissioned its report.⁴⁵

The expert that the city council hired – Professor J. Morgan Kousser of Caltech – looked at the history of Santa Monica’s at-large system and concluded that, indeed, the City might well be vulnerable. Not surprisingly, Professor Kousser was hired again as an expert in the 2016 case. This time, however, he was hired not by the City but instead by the plaintiffs.

In any event, according to the 2016 CVRA complaint, no response to the initial letter was received from the Santa Monica city attorney or from anyone else. Complaints of this type are primarily venues for assertion, not proof. But it did note some local history. Some of that history had been discussed in the earlier Kousser report of 1992.

Santa Monica had a district form of government from 1906 until 1914. Before 1906, it had a system of five trustees elected at large. After 1914, it was run by three commissioners elected at-large, each with separate functions (public safety, public works, and finance).⁴⁶ In 1946, the issue of switching back to districts was raised, studied by a specially-created Board of Freeholders, and then rejected by voters. There is ample evidence that these concerns were that district voting would give power to minorities as they were viewed at the time. The complaint, for example, cites an ad from the 1946 campaign that *opposed* the at-large system that was being proposed then to voters, and which referred to the “dictatorship” that would result from at-large voting:

*“Where will the laboring man go? Where will the Jewish, colored, or Mexican go for aid in his special problems? Where will the resident of Ocean Park, Douglas district, the Lincoln-Pico and other districts go when he needs help. The proposed charter is not fair – it is not democratic. It is a power grab – and we plead with all citizens of Santa Monica to protect their interests (vote no)...”*⁴⁷

Santa Monica voters of that era evidently saw the kind of arguments raised in the opponents’ ad as precisely the reason to vote “yes” on the at-large option. That is, the issue of who would be favored and who would be disadvantaged by at-large voting was discussed in the campaign. And voters made their choice for an at-large system with that information in the background.

As the saying goes, the wheels of justice grind slowly. Nothing much happened after the 2016 filing, other than that the city council in closed session evidently decided to fight the lawsuit and to hire outside counsel to do so. However, the court requested more detailed information from the plaintiffs. From a strategic point of view, it is in the interest of plaintiffs to put just enough information in their complaint to have the court willing to consider it, but not so much as to provide the defendant city with all the evidence the plaintiffs plan to produce.

⁴⁵A tribute to Avila can be found in Marcos Breton, “Before he died last week, this man changed how we vote in California. Do you know him?” *Sacramento Bee*, March 18, 2018. Available at <https://www.sacbee.com/news/local/news-columns-blogs/marcos-breton/article205223534.html>.

⁴⁶This history is contained in <https://www.santamonica.gov/Media/Default/Attorney/Election/20170509.Opp%20to%20Demurer.pdf>.

⁴⁷*Ibid.*

According to a more detailed amended complaint filed in February 2017, no settlement discussion or negotiations had taken place between the plaintiffs' attorneys and City representatives. The amended complaint provided added evidence of intent to discriminate back in 1946 and included information about elections more recently.⁴⁸ It noted that of the almost 90,000 Santa Monica residents counted in the 2010 Census of Population, about 13% were Latinx. It cited the electoral defeats of candidates preferred by Pico Neighborhood voters who nonetheless lost citywide. And it indicated the prejudice was the cause of these defeats. For example, when Tony Vazquez ran in 1994, a cartoon appeared in the now-defunct local newspaper – the *Outlook* – showing him as member of a street gang. (Vazquez's case is complicated, however, because he had been elected in 1990, i.e., before the 1994 defeat, and later came back to the council in 2012.) Plaintiff Maria Loya's case of 2004 is cited along with the Oscar de la Torre case of 2016.

The amended complaint also referred to the episode in 1992 that led to the expert's report cited earlier. At that time, Santa Monica created a Charter Review Commission whose report suggested that at-large voting was "an obstacle to ethnic empowerment." It noted that the system provided for overrepresentation of the north of Montana (Avenue) area and the lack of Pico Neighborhood representation. However, the council – by a four-vote majority – rejected a change to the existing election system. All of these examples and allegations were previews of what was being planned for a future trial on the issue of a CVRA violation.

The Response

"The complaint... fails to allege the constituent facts of racially polarized voting – that Latinos have preferred certain candidates and have voted as a bloc, and that the white bloc usually outvotes the Latino bloc."

Demurrer filed by the City's attorneys March 30, 2017⁴⁹

With an initial court hearing on the complaint scheduled for May 22, 2017, the City's official response to the complaints came in late March, apparently after some contact by phone, email, and a face-to-face meeting with the plaintiffs' attorneys. A demurrer on behalf of the City was filed – essentially an argument to the court that there was no reason for further litigation on the issues to take place because the plaintiffs had not supplied sufficient evidence for further action. In effect, the demurrer was an argument that going forward would be a waste of time for the court. Accompanying documents with the demurrer disputed the plaintiffs' interpretation of the historical and voting records. It was noted that

⁴⁸The Advocates for Malibu Public Schools group was dropped as a plaintiff and the amended complaint focused only on the City of Santa Monica. It is available at

<https://www.santamonica.gov/Media/Default/Attorney/Election/20170223.FAC-1.pdf>.

⁴⁹Available at

<https://www.santamonica.gov/Media/Default/Attorney/Election/20170330.Demurrer%20to%20FAC.pdf>.

apart from events in 1946, Santa Monica voters, by roughly a two-thirds margin, had twice rejected going to district voting in 1975 and again in 2002.⁵⁰

On May 9, 2017, a response to the demurrer was filed by the plaintiffs pointing to the intent of the legislature in adopting the CVRA. The intent, as interpreted by the plaintiffs, was to provide a state-level path for complaints of racially-polarized voting that was easier to traverse than federal standards. The plaintiffs' attorneys argued essentially that the plaintiffs had provided sufficient evidence – presumably more would be adduced in a trial – for the court to proceed. Indeed, the plaintiffs suggested that expert witnesses would be provided at a later stage to attest to the merits of the complaint.

After a hearing on May 22, 2017, Superior Court Judge Yvette M. Palazuelos found that the plaintiffs had produced sufficient evidence on a preliminary basis for the case to go to trial. October 30, 2017 was set as the date, although the trial was later postponed to July 30, 2018.

The Next Phase

"That Santa Monica has said 'we will fight to the death' is ...a waste of resources (and) politically... not in line with Santa Monica's progressive image."

Plaintiffs' attorney Kevin Shenkman⁵¹

The period between the decision to proceed to a trial and the trial itself was marked with legal skirmishing and a discovery process that proved embarrassing to some members of the city council. The City's attorneys argued in a brief that the CVRA didn't authorize neighborhood groups such as the Pico Neighborhood Association to file the suit. They argued that even if there was a concentration of Latinx population in the Pico Neighborhood, most Latinx residents in Santa Monica lived outside that area. Basically, the defense strategy seemed to be to try and prevent the case from moving forward, and – if that strategy failed at the lower court level – to appeal.

There may also have been an intent to delay the process since the plaintiffs' attorneys had to bear the out-of-pocket costs while receiving no pay for their own services. They would be reimbursed for costs and rewarded with legal fees for their own efforts only if they ultimately prevailed and only after whatever appeals the City filed were adjudicated. The City's outside attorneys, it is reasonable to assume, were being paid as the process unfolded from municipal funds. It is unlikely that their payments were at risk or that they were contingent on the outcome of the case although, of course, neither the City nor its law firm disclosed what arrangements they had.

One assertion made by the City in this period sparked a mini-controversy. The City's brief pointed to city council members Latino Tony Vazquez and Latina Gleam Davis as evidence that Latinx candidates can be elected in Santa Monica. But Davis had not publicly identified herself as Latina prior to the lawsuit. After the suit against the City was filed, she then declared that her adopted parents had told her that her

⁵⁰Declaration of Daniel R. Adler. Available at <https://www.santamonica.gov/Media/Default/Attorney/Election/20170330-2.Request%20for%20Judicial%20Notice%20-%20Declaration%20of%20Daniel%20Adler.pdf>.

⁵¹Kate Cagle, "Lawsuit challenging Santa Monica elections survives City challenge," *Santa Monica Daily Press*, June 21, 2017. Available at <https://issuu.com/smdp/docs/062117>.

biological mother was white – although from Chile – but that her father was Mexican. In a subsequent hearing, there was back and forth about DNA testing and family history.⁵² The controversy was somewhat reminiscent of the brouhaha over U.S. Senator (and 2020 presidential candidate) Elizabeth Warren's claim of Native American heritage. At one point, the plaintiffs' attorneys commissioned a poll aimed at showing that whatever Davis considered herself, Santa Monica residents thought she was white. Ultimately, the court found the entire matter to be irrelevant.

Notably, the City's attorneys argued that the CVRA violated both the California and the U.S. constitutions because they are "race-conscious remedies that are not narrowly tailored to serve a compelling government interest, and impermissibly dilute the votes of non-Latino voters in the City of Santa Monica based on racial criteria." In addition, they argued that "to the extent plaintiffs seek a remedy that is intended or designed to give more representation to Latino voters than to other voting groups or protected classes, the requested remedy violates the one-person, one vote of the United States Constitution."⁵³

Thus, it appeared possible that the defense's intent was to open an avenue to an eventual appeal to the U.S. Supreme Court. Their arguments were the type that has been used to challenge federal voting rights protections and affirmative action. In the past, the U.S. Supreme Court had refused to hear such arguments against the CVRA. But an increasingly-conservative Supreme Court might prove to be more receptive to these claims.

The interim period before the trial did impose some costs on council members. During a pre-trial discovery process, various members of the city council were forced to testify. Issues were uncovered that may not have had much to do with the CVRA allegations but were embarrassing. In one hearing, councilmember Pam O'Connor, who had been involved in the scandal over a firing of an appointee, walked out of a hearing when the firing matter came up saying "Bye, guys." She was ordered back.⁵⁴ In another episode, she was questioned about possible conflicts of interest regarding payments as an historic preservation consultant on projects in the City.⁵⁵

⁵²Kate Cagle, "Davis' testimony ends argument phase of voting rights trial," *Santa Monica Daily Press*, September 11, 2018. Available at <https://www.smdp.com/davis-testimony-ends-argument-phase-of-voting-rights-trial/169247>; Jorge Casuso, "Santa Monica Has Two Latino Council Members, City Officials Contend," *Santa Monica Lookout*, July 10, 2017. Available at https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2017/July-2017/07_10_2017_Santa_Monica_Has_Two_Latino_Council_Members_City_Officials_Contend.html.

⁵³City of Santa Monica's Answer to the First Amended Complaint, June 27, 2017. Available at <https://www.santamonica.gov/Media/Default/Attorney/Election/20170627.City%20Answer%20to%20FAC.pdf>.

⁵⁴Niki Cervantes, "Santa Monica City Councilmember Ordered Back to Deposition in Voting Rights Lawsuit," *Santa Monica Lookout*, October 19, 2017. Available at https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2017/October-2017/10_19_2017_Santa_Monica_Councilmember_Pam_OConnor_Ordered_Back_to_Deposition_in_Voting_Rights_Lawsuit.html.

⁵⁵Charles Andrews, "Don't Remember... Can't Recall," *Santa Monica Daily Press*, April 25, 2018. Available at <https://www.smdp.com/dont-remember-cant-recall/165715>.

Councilmember Tony Vazquez revealed income from the TELACU organization during his deposition that it turned out was omitted from a required disclosure form he had filed.⁵⁶ The matter spilled over into issues of possible conflict of interest related to Vazquez's wife and the Santa Monica-Malibu Unified School District. Depositions in the CVRA case also became linked to campaign contributions on behalf of councilmembers related to a dispute between rival Santa Monica hotels, the Huntley and the Miramar.⁵⁷

The City, having earlier failed to have the lawsuit thrown out, tried instead to have the court make a summary judgment in its favor. A request for summary judgment is a request that the court find, based on preliminary evidence, that the plaintiffs have no viable case and thus the matter should not go to full trial. Various arguments were made. An election expert hired by the City's law firm provided statistical evidence that there was no way to create a majority Latinx district in Santa Monica because Latinx residents were spread out geographically, even if there was a concentration in the Pico Neighborhood. There was also analysis of election results suggesting – according to the interpretation of another expert – that Latinx residents were not disfavored by the at-large system.⁵⁸

The plaintiffs' attorneys argued that the CVRA required only racially-polarized voting, not a majority district for a minority group.⁵⁹ The issue of what the remedy should be in cases of racially-polarized voting was a matter for the court to consider after trial. In addition, plaintiffs had their own expert who produced plausible districts that would address the problem. An alternative interpretation was provided of both history and voting outcomes.

As noted earlier, one of the experts hired by the plaintiffs' attorneys was Caltech Professor J. Morgan Kousser, the same Professor Kousser who had written the 1992 report for the City warning of potential vulnerability of the at-large system under the federal voting rights law. In addition, the Latino mayor of San Juan Capistrano provided a statement that he had lost under that city's at-large system, but then

⁵⁶Jorge Casuso, "Santa Monica Councilmember Tony Vazquez Has Reported Earning No Income Since His 2012 Election," *Santa Monica Lookout*, November 1, 2017. Available at https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2017/November-2017/11_03_2017_Santa_Monica_Councilmember_Tony_Vazquez_Has_Reported_Earning_No_Income_Since_His_2012_Election.html. TELACU is a Latinx-serving non-profit organization.

⁵⁷Niki Cervantes, "Voting Rights Plaintiffs Poised to Scrutinize Tainted Campaign Contributions," *Santa Monica Lookout*, March 30, 2018. Available at https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2018/March-2018/03_30_2018_Santa_Monica_Voting_Rights_Plaintiffs_Poised_to_Scrutinize_Tainted_Council_Campaign_Contributions.html

⁵⁸Declaration of Daniel R. Adler at <https://www.santamonica.gov/Media/Default/Attorney/Election/20180329-2.Request%20for%20Judicial%20Notice%20ISO%20City's%20MSJ.pdf>; Declaration of Peter Morrison at <https://www.santamonica.gov/Media/Default/Attorney/Election/20180329-2-EX%20AA.Morrison%20Declaration.pdf>.

⁵⁹Plaintiffs' Opposition to Defendant's Motion for Summary Judgment, filed May 31, 2018; Declarations of David Ely, J. Morgan Kousser, and Justin Levitt: <https://www.santamonica.gov/Media/Default/Attorney/Election/20180531.Opposition%20to%20MSJ-1.pdf>; <https://www.santamonica.gov/Media/Default/Attorney/Election/20180531-1.ElyDeclaration.pdf>; <https://www.santamonica.gov/Media/Default/Attorney/Election/20180531-2.Kousser%20Declaration.pdf>; <https://www.santamonica.gov/Media/Default/Attorney/Election/20180531-3.Levitt%20Declaration.pdf>.

won after the city moved to districts under threat of a lawsuit. He noted that none of the districts in San Juan Capistrano had a Latinx majority.⁶⁰

The Kousser Declaration

"A common editorial cartoon figure in the (Santa Monica Evening Outlook) in 1946 was 'The Little Savage,' an exaggeratedly thick-lipped, grass skirted, bare chested African or perhaps Australian native with a stick through his nose."

Kousser declaration⁶¹

Kousser's statement in the summary judgment phase of the litigation was particularly significant since it combined both statistical evidence of racially-polarized voting – the key to a CVRA case – and a descriptive history going back to the 1946 election when Santa Monica voters chose the current electoral system. In his statistical material, Kousser noted that there are no direct data available as to the racial or ethnic background of individual voters. When individuals register to vote, they are identified only by name. In the case of Latinx voters, however, lists of Spanish surnames can serve as proxies for the Latinx electoral composition in a precinct.

Statistical Analysis

The votes received by various candidates by precinct can then be analyzed as a statistical function of the proportion of Latinx voters in the precincts. That is, a regression analysis can be performed in which the percent of votes received by a particular candidate is a function of the percent of estimated Latinx voters by precinct. Latinx preferences can be inferred from what the regression analysis predicts would be the voting result in a hypothetical precinct that was 100 percent Latinx in composition. Because precincts vary in size (number of voters), the regression analysis can be weighted by size so that small precincts are not over-weighted.

Kousser went on in his statement to note that Asian names can also be used to add another racial/ethnic group to the analysis. He also noted that regression analysis, because it involves an assumed particular functional form can sometimes produce predictions that fall out of the possible range of the votes a candidate can receive. (A candidate cannot receive less than zero percent of the vote or more than a hundred percent.) He discussed statistical techniques that seek to limit the predictions to the possible range. And then he presented his statistical analysis of Santa Monica elections and concluded there was evidence of racially-polarized voting behavior.

In his historical analysis, Kousser analyzed the 1946 voter decision to create the current at-large system. Although he goes into detail and provides some statistical evidence, it really is pretty clear that race/ethnic prejudice played a part in that campaign. To say otherwise is to assert that Santa Monica was somehow isolated from the social currents of that period.

⁶⁰Declaration of Sergio Farias. Available at

<https://www.santamonica.gov/Media/Default/Attorney/Election/20180531-4.Farias%20Declaration.pdf>.

⁶¹<https://www.santamonica.gov/Media/Default/Attorney/Election/20180531-2.Kousser%20Declaration.pdf>.

The next big push to switch to districts came in 1974. By that time, attitudes on race issues had begun to shift, partly as new, younger residents moved into Santa Monica. It was also the case that by the 1970s, the route of the Santa Monica freeway had swept through an area inhabited by minority groups and displaced them. There were by that time, however, two black members of the city council, both of whom (having been elected through the at-large approach) opposed moving to district voting. Although the history of the 1974 episode is ambiguous – certainly when compared with 1946 – Kousser provided statistical evidence that those voters who favored the two (losing) Latinx council candidates on the ballot in 1974, also voted *for* districts.

By the 1980s, the issue of SMRR domination of the city council was the dominant feature of Santa Monica politics. The anti-SMRR faction put Proposition J on the ballot in 1988 that would have kept the at-large system but had elections by seats. That is, each of the seven council seats would be a separate contest with separate candidates.

The anti-SMRR faction believed that with separate seats, SMRR would gain fewer seats on the council. In Kousser's view, dropping the first-past-the-post system (in which either three or four of the council seats are up for election) would have potentially *reduced* strategic voting which could have elected a minority candidate. (Under strategic voting – so-called “single shotting” – a voter could boost the chances of a single candidate under first-past-the-post by voting only for that one and not for any of the others.) Nonetheless, the campaign for Proposition J portrayed it as *favoring* minority candidates (perhaps because all successful SMRR-backed candidates had up to that point been white. In any case, J failed.

At the time of the Proposition J episode, Tony Vazquez – a local activist – said he favored a district system because it would allow a candidate from the Pico Neighborhood to win. Still, he managed to get himself elected as a SMRR-endorsed candidate in 1990 under the at-large system, the first Latinx candidate to do so. Four years later, he was up for re-election and was defeated. Kousser argued that the Vazquez defeat for reelection in 1994 illustrated the anti-Latinx tendency in the at-large system.

As noted, in the early 1990s, the city council created a Charter Review Commission to look at alternative voting systems. Ultimately, two alternatives were considered. One was a ranked voting system. Under that approach, voters rank the candidates. The candidate with the least number top-ranked votes has his/her voters' second choices allocated among the remaining candidates. This complicated process continues until one candidate receives a majority.⁶²

The other alternative considered by the Commission was district voting. But when the Commission's report – which favored the ranked approach – went to the council, neither option could obtain a majority of council votes. In the end, the at-large system remained in force. The Commission did point out that Pico Neighborhood residents at the time felt disenfranchised by the at-large system. They believed their neighborhood had been treated by the City as a dumping ground for the homeless, for drug-treatment centers, and other undesirable facilities.

Councilmember Vazquez, it might be noted, continued to favor a district system when the Commission report was considered. And in the 1994 (at-large) election he was defeated in what Kousser depicts as a

⁶²San Francisco uses this type of system.

hostile climate for Latinx residents. That year saw Proposition 187 on the statewide ballot. Prop 187 would have barred undocumented individuals from public services. It was part of then-Governor Pete Wilson's campaign for reelection. In the 1994 campaign, Vazquez was depicted by opponents as weak on crime and on the homeless issue. As described earlier, Vazquez was shown in a newspaper ad in a group of people who looked like gang members. He attributed his defeat at that time to racism and did not run again until 2012 (when he won).

In 2002, Measure HH was on the Santa Monica ballot which would have both created districts and moved to a mayor with veto power elected citywide. Measure HH would also have applied term limits to the council and installed a primary-runoff system rather than first-past-the-post. Santa Monica would then have had a system similar to that found in the surrounding City of Los Angeles. In the campaign, HH was depicted by opponents as a takeover by business interests and was defeated. Kousser simply recounted the HH defeat and didn't use it to illustrate a racial agenda.

In many ways, the Kousser declaration is the essential part of the plaintiffs' case. He argued that statistical evidence and descriptive history indicate that Santa Monica's 1946 at-large system was originally created, at least in part, for discriminatory reasons. When the issue of district elections subsequently arose, either there was a discriminatory element in rejecting the option or there was a complex of other issues that accounted for the defeat of districts. The thrust is to weaken the case of the City that even if motivations in 1946 were discriminatory, the system which endured thereafter is the will of the people as expressed in subsequent elections and that it doesn't violate the CVRA.

Because of the defendant's push for summary judgment, the Kousser declaration came out early, i.e., before a full trial. It is possible that the defense strategy in calling for summary judgment – apart from delay and apart from the off-chance that the court might actually make a summary judgment – was to obtain a preview of what would be offered in evidence in a trial. The City's attorneys succeeded in that objective, assuming that was their goal. But then they made a mistake, not of grand strategy but of postal delivery.

Whoops!

"Defendant's sole argument was that the motion was timely served because it was also served by e-mail... However, electronic service is not permitted unless the parties stipulate to such service..."

Decision of Judge Yvette M. Palazuelos, June 19, 2018⁶³

Despite the mini-trial that developed over the City's request for summary judgment, there never was an evaluation of the request based on statistical analysis, historical evidence, or legal interpretation. The City's attorneys failed to deliver required material within a legally-mandated time limit to Mr. Shenkman. This error occurred because priority mail was inadvertently used rather than express mail. As a result, the material arrived late.

⁶³Available at

<https://www.santamonica.gov/Media/Default/Attorney/Election/20180619.Orders%20Denying%20Motion%20Re%20Waiver%20and%20MSJ-1.pdf>.

In view of the late arrival, the City's attorneys asked Judge Palazuelos to overlook the error, particularly because email delivery had been used within the time limit. In their view, the untimely paper delivery should be viewed as a technical error that shouldn't prevent a decision on summary judgment. A substantial volume of briefs and countering briefs was generated examining the arcane details of postal delivery service to Malibu (where Shenkman resides).

When Judge Palazuelos rejected these arguments. The delivery was late, and email was not an allowable substitute. She decided to proceed to a full trial due to the delivery error. That is, she decided not to consider the merits of the pro and con evidence on whether there was discriminatory voting that had been brought forth by the two parties. The City's attorneys filed their objections to her verdict with the Court of Appeal. Yet more briefs were filed. But the Court of Appeal rejected the City's objections to the lower court decision without comment.⁶⁴

It would be interesting to know how the prominent law firm that had been hired to defend the City explained its error of timely postal delivery to the city council and the city attorney. But whatever the explanation, it was conveyed behind closed doors. With the briefing and appealing and private explaining out of the way, the case proceeded to trial on July 30, 2018.

The Trial

"Other California cities believed just as strongly in their at-large election system. They nonetheless switched to district elections out of fear of overwhelming costs... We are fighting this lawsuit because we believe it lacks merit. But other cities without our financial resources haven't had that choice."

Santa Monica Councilmembers (Mayor) Ted Winterer and Gleam Davis⁶⁵

"Historically people in power have sought to preserve their position at the cost of the public good... Mayor Winterer recently wrote an op ed in the LA Times that these matters were best dealt with by voters and not the courts. Absent these court decisions, we would probably still have Jim Crow Laws and segregated schools."

Plaintiff Maria L. Loya⁶⁶

As the trial date approached, public awareness increased and there was an effort to move public opinion, as the quotes above suggest.⁶⁷ Also, at that time, a citizens' group with some support from certain city council members placed a term limits measure (Measure TL) on the November ballot. The

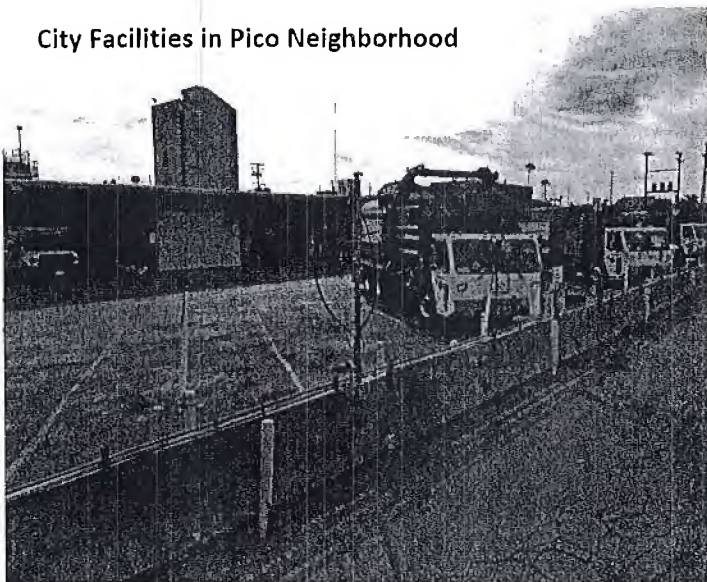
⁶⁴https://www.santamonica.gov/Media/Default/Attorney/Election/20180712.B291048_PTD_CityofSantaMonica.pdf.

⁶⁵Ted Winterer and Gleam Davis, "Santa Monica shouldn't have to change its local elections," *Los Angeles Times*, July 12, 2018. Available at <https://www.latimes.com/opinion/op-ed/la-oe-winterer-davis-santa-monica-20180712-story.html>.

⁶⁶Maria L. Loya, "City of Santa Monica's Election System Intentionally Dilutes Minority Vote," *Santa Monica Lookout*, July 26, 2018. Available at https://www.surfsantamonica.com/ssm_site/the_lookout/letters/Letters-2018/07_26_2018_OPINION_City_of_Santa_Monicas_Election_System_on_Trial%20.html.

⁶⁷Readers are reminded that the account presented in this chapter is based on the briefs and other litigation documents available on the City's website and news accounts. Complete transcripts were not available to the author.

City Facilities in Pico Neighborhood



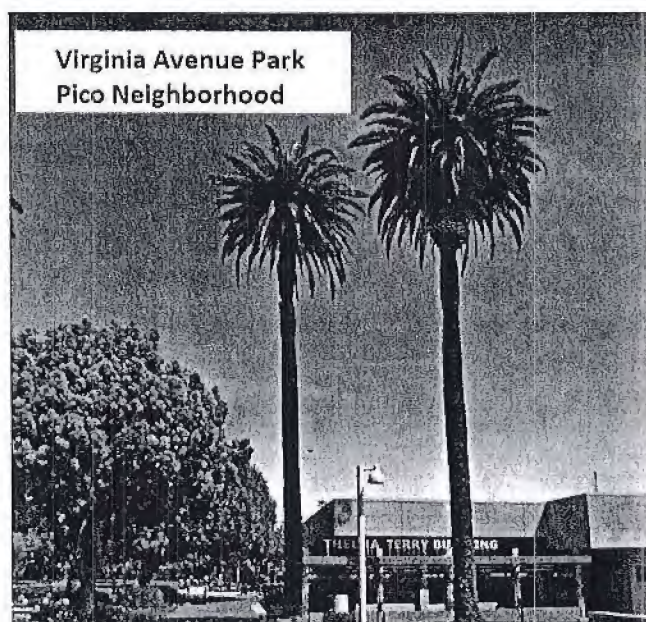
measure set a limit of twelve years for service on the council, but without retroactivity. Thus, its immediate impact on the incumbent council would be nil. But TL might be interpreted as an alternative to the more dramatic shift to districts that the court case might produce.

The council also faced the likely loss of its one Spanish-named member, Tony Vazquez. Vazquez was a candidate for a seat on the state Board of Equalization. Although he came in second in the June 2018 top-2 primary behind a Republican, that showing was the result of a number of

Democrats splitting the Democratic vote. With the contest now between one Republican and one Democrat, and the district heavily Democratic, Vazquez would likely be leaving the council.⁶⁸

Although, as noted earlier, councilmember Gleam Davis publicly claimed to be a Latina when the CVRA dispute began, the probable loss of Vazquez was at least a public relations problem. SMRR essentially solved the problem by endorsing a local restaurateur, Greg Morena. There was a good chance Morena would win in November since SMRR did not back incumbent Pam O'Connor who was associated with the local scandal involving the hiring and then unhiring of a city official. If Morena won, one departing Spanish-named Latino would be replaced by another.

The actual trial mirrored arguments that had developed earlier, especially those arguments surrounding the rejected request by the City for summary judgment. Plaintiffs' attorneys depicted the Pico Neighborhood as a dumping for undesirable municipal services due to lack of adequate representation. A landfill in the Pico Neighborhood that had been turned into a park was said to be leaking methane. The 1946 history was raised. Election results and statistics were cited. In effect, the Kousser



⁶⁸There was some talk about whether it would be legal for Vazquez to hold seats on the Board of Equalization and the city council. The city attorney requested an advisory opinion from the state attorney general as to whether Vazquez could hold both positions and received an opinion that he couldn't. See Madeleine Pauker, "Councilmember Tony Vazquez to step down in January," *Santa Monica Daily Press*, November 29, 2018. Available at <https://www.smdp.com/councilmember-tony-vazquez-to-step-down-in-january/171177>.

material made up a large part of the plaintiffs' case. Kousser, of course, testified as did plaintiffs Maria Loya and her husband Oscar de la Torre.

The City's defense attorneys presented a brief at the start of the trial and made an opening statement using a PowerPoint slideshow with over a hundred slides.⁶⁹ Key defense arguments were:

- While the Latinx voting-age population of Santa Monica is only 13.6 percent of the total, they are currently represented by two of the seven members of the city council (Vazquez and Davis).
- At least during the elections of the 21st century, "Latino-preferred" candidates have done well in city elections.
- City voters rejected district elections in 1975 and 2002. The at-large system is the will of the people.
- The CVRA requires an alternative to at-large voting only if an alternative would provide increased opportunity for (in this case) Latinx voters.
- The plaintiffs cannot prove racially-polarized voting or vote dilution. Absent the latter, "racial gerrymandering" is not allowed.
- Kousser is an historian (not a statistician) who has manipulated and misinterpreted the data. He should have looked at Latino-*preferred* candidates as opposed to Spanish-*surnamed* candidates.
- Election results of non-council elections should have been considered (School Board, Rent Board, Community College Board)
- De la Torre deliberately threw the election by not making a real effort in 2016 to support the lawsuit so his results should be ignored.
- The defense's expert, Professor Jeffrey B. Lewis of UCLA's Department of Political Science is a statistician (unlike Kousser) and he properly uses Latinx-preferred candidates in his analysis. For historical analysis, the defense will use its own historian, American University Professor Allan J. Lichtman.
- The plaintiffs' demographic and electoral experts are unable to carve out anything close to a Latinx-majority district. The district they propose which includes the Pico Neighborhood would have a voting-age population that is only 30 percent Latinx.
- Key groups in Santa Monica such as SMRR and the local Democratic Club have endorsed Latinx candidates.
- There are very nice municipal facilities in the Pico Neighborhood such as a library and Virginia Avenue Park.
- Kousser has misinterpreted the 1946 episode. Various Latinx, Jewish, and black prominent residents in Santa Monica of that period endorsed the new system at that time.

The trial went on through October. It is clear from the listing above that the City's attorneys attacked the plaintiffs' case at every point. Yet when the decision came down, they lost. Before getting into the

⁶⁹City of Santa Monica's Opening Statement, August 1, 2018. Available at https://www.santamonica.gov/Media/Default/Attorney/Election/City%20of%20Santa%20Monica_Opening%20Deck%20v16.pdf.

mechanics of the decision and the appeal, it is interesting to speculate on why the City lost, given all the effort that went into its attorneys' aggressive attack on the defendants' case.

There may have been overkill in the defense, perhaps the result of hiring a high-profile law firm that had to prove its worth. The history of the 1946 episode is pretty clear. Why would Santa Monica be immune from the prejudices of the day? In the 1940s, discrimination on the basis of race and ethnicity was legal, nationally and locally. The U.S. military – that had just finished with World War II in 1946 – was segregated. The south was segregated. Some school districts in California segregated Mexican-American children from Anglo children. Restrictive covenants in housing were legal and commonplace. California had played a major role in the internment of the West Coast Japanese-origin population. The so-called Zoot Suit riots had occurred in downtown LA during the war.

Could Santa Monica have plausibly been an island oasis, idyllically separated from these external conditions and events? If there wasn't significant prejudice in the City, why would Santa Monica have had its "Ink Well" beach? Might it not have been better simply to concede that things were different in the distant past of 1946, and maybe even in the not-so-distant past, but that in more recent times attitudes (and election results) had changed for the better? Yes, the defendants had made such claims about the recent past, but these claims were somewhat lost among all the other disputation.

While it is true that the plaintiffs could not produce a majority-Latinx district, they did produce a 30 percent district. If the City retained its first-past-the-post system but went to districts, even a significant minority could elect a preferred candidate. You really don't need highly sophisticated statistical evidence to see that point.

The idea that it's easier to campaign without a lot of money in a district that is 1/7th the size of Santa Monica than citywide is also hard to escape. Of course, no one can definitively determine in advance what a switch to districts would produce in practice. But if politics is local, it is more likely that local concerns will be emphasized, and significant demographic groups will have more voice.

The one (small) tangible victory that the City's attorneys had at the trial court level involved a dispute over plaintiff Maria Loya's emails. During the discovery phase, the defense had apparently requested emails related to various issues that would come up in the trial. However, only a perfunctory search for such emails had been made. The defense argued that substantial portions of the evidence presented by the plaintiffs should be excluded as a penalty and that monetary damages to the defense of about \$54,000 should be paid. Judge Palazuelos was unwilling to exclude the requested evidence since doing so would essentially preclude presentation of the plaintiffs' case. But although she found the claim of \$54,000 excessive, she did agree to damages of about \$21,600.⁷⁰

Given the overall failure of the City's defense at the trial court level, and – despite the need for a (closed) city council meeting to ratify an appeal – one interpretation of the strategy of defense overkill was that it was always aimed for an appeal. Perhaps appeal had always been the objective. Although

⁷⁰See Judge Palazuelos' ruling on this matter at <https://www.santamonica.gov/Media/Default/Attorney/2018.09.11%20Tentative%20Ruling%20on%20City's%20Sanctions%20Motion.pdf>.

there are no public records of what the City's attorneys told the city council early on, given the Palmdale case, and given prior litigation successes of Shenkman and associates, the strategy from the beginning might well have been win-on-appeal.

The City's attorneys may have contemplated going all the way to the U.S. Supreme Court if necessary (and if possible). The strategy could then be to make a counterargument to every assertion offered by the plaintiffs, put those counterarguments in the trial record, and give some friendly judge at a higher level something to which to point. If you – Mr. or Ms. Appeal Judge – or maybe you – Mr. or Ms. Supreme Court Justice – don't buy argument A, what about argument B? Or C? Or D? Or E?

Decision and Appeal

"We received today the court's tentative ruling. We are disappointed that it contains no reasoning in support of the court's decision, which we believe is based on an unjustified adoption of the plaintiffs' misguided and unsupported view of the law. In accordance with the court's order, we will file briefing on the issue of remedies. Once the court's ruling is final, we plan to appeal, which will allow the California Court of Appeal to address the significant legal issues of first impression posed by this case."

Defendant's attorney Theodore J. Boutrous, Jr., November 13, 2018⁷¹

"...Defendant filed what it calls a "Request for Statement of Decision" but is really more of an inquisition of this Court by a litigant unhappy with the Court's decision. Defendant is entitled to an explanation of the legal/factual basis for the Court's decision; it is not, however, entitled to the rehearing of the evidence it seeks through its 152 questions, including subparts, that would only serve to burden and punish this Court for having the audacity to rule in favor of Plaintiffs in their effort to vindicate the voting rights of the Latino community in Santa Monica."

Response of plaintiffs to defendant's request for Judge Palazuelos to explain her tentative decision⁷²

In November 2018, Judge Palazuelos announced she was making a tentative decision favoring the plaintiffs.⁷³ There was no detail in her announcement and no detail. The City's attorneys asked for her reasoning and detail. Their request, however, was effectively a listing of every point that they had made as the lawsuit progressed and a demand that the judge explain how she had viewed each and every point. The plaintiffs' attorneys saw the request as an attempt to relitigate the case.

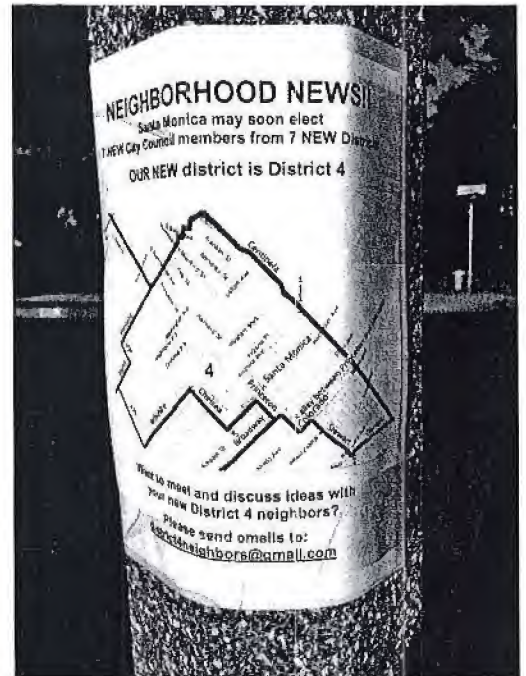
⁷¹City of Santa Monica, Statement on Tentative CVRA Decision, November 13, 2018. Available at <https://www.santamonica.gov/press/2018/11/13/statement-on-tentative-cvra-decision>.

⁷²Brief filed November 26, 2018. Available at <https://www.santamonica.gov/Media/Default/Attorney/Election/Rsp%20and%20OBJ%20to%20Def%20Req%20for%20Statement%20of%20Decision.pdf>.

⁷³Available at <https://www.santamonica.gov/Media/Default/Attorney/Election/PNA-Tentative-Decision.pdf>.

Judge Palazuelos did issue a more detailed opinion. She found Santa Monica's at-large election system to be in violation of the CVRA and the Equal Protection Clause of the California constitution.⁷⁴ The City was ordered to hold a new, district-based election by July 2, 2019. The existing city council was ordered to cease function by August 15, 2018. Although the plaintiffs' attorneys had a proposed map of the City containing seven districts - shown in Appendix A to this chapter - Judge Palazuelos initially adopted only the single district (number 1) containing the Pico Neighborhood. The City could then propose the boundaries of the other six.

However, the City would not go along with the invitation to draw districts on the grounds that any such process would be lengthy and would involve consultations with local voters and residents. Another motive may have been that drawing districts would be seen by residents as a sign of concession that eventually there would be district elections. Some anonymous individual(s) began posting district maps, based on the plaintiffs' proposal, on City utility poles. (They were quickly removed as illegal postings.) And the plaintiffs' argued that the proposed consultation was just an attempt to delay a district election.⁷⁵ Absent a proposal for districts from the City, Judge Palazuelos adopted the plaintiffs' map as part of her final decision.



Appeals take time. Once the City lost before Judge Palazuelos, it faced a dilemma. Councilmember Vazquez was elected to the state Board of Equalization in November 2018, and thus a vacancy was created. With Vazquez gone, there would be one-less Spanish-surnamed individual on the city council. In theory, the council could have called a special election - which would have been held at-large - to fill the seat. But doing an at-large election would have been sticking a finger in the judge's eye, since she had decided that at-large elections were illegitimate.

The alternative route was for the council, by majority vote, to appoint someone to fill the seat. In theory, the council could have chosen plaintiff Maria Loya or her husband Oscar de la Torre.⁷⁶ But such a choice was not likely. Instead, the council called for applications for the vacancy and then chose a Latina from the Pico Neighborhood, Ana M. Jara, who had testified for the City during the trial. The council thus avoided antagonizing the judge and losing a councilmember with a Spanish-surname. It gained a

⁷⁴Decision of February 13, 2019. Available at <https://www.santamonica.gov/Media/Default/Attorney/4.%20Judgment.pdf>.

⁷⁵Plaintiffs' brief of December 4, 2018. Available at <https://www.santamonica.gov/Media/Default/Attorney/Election/reply%20remedies%20brief%20and%20declaration.pdf>.

⁷⁶De la Torre applied for the position. See Jorge Casuso, "Does the City Council Have the Votes to Appoint a New Member?" *Santa Monica Lookout*, January 17, 2019. Link for this article no longer functions. The author has a printout available on request. The author was unable to determine from news accounts if Loya applied.

new member who was likely to be friendly to the agenda of continuing the lawsuit through an appeal.⁷⁷ Loya unsurprisingly characterized Jara as “a rubber stamp on the council that will work in favor of special interests that control City Hall.”⁷⁸

When a decision, such as that rendered by Judge Palazuelos, is appealed to the Court of Appeal, the lower court’s decision is “stayed” (held in abeyance) while the appeal is processed. However, the decision in this case had two elements. The City was 1) ordered to hold a district election by July 2, 2019 using the district map included in the verdict, and 2) the current city council was ordered to cease functioning after August 15, 2019. Thus, the first part of the decision was an order for the council to do something (hold a district election by July 2, 2019) and the second part was an order *not* to do something (function after August 15, 2019). In the plaintiffs’ view, only the order to hold a district election – a “mandatory” injunction – was automatically stayed during the appeal, but the second element – a “prohibitory” injunction – was not automatically stayed.

The defense – not surprisingly – saw the issue differently. If the City didn’t hold a district election in July 2019, there would be no functioning city council by mid-August, an untenable situation. Thus, the City would be forced to hold a district election even though the requirement to do so might later be reversed on appeal. The City also sought to add an analysis of the November 2018 election by its expert, Jeffrey Lewis, presumably in support of the idea that the 2018 election was non-discriminatory.⁷⁹ Judge Palazuelos would not endorse the City’s position.⁸⁰

However, on appeal from her decision, the Court of Appeal eventually agreed with the City and ruled that the entire lower-court decision – the requirement for a July 2019 election *and* the August non-functioning of the at-large elected council was stayed.⁸¹ The Court of Appeal therefore excluded the

⁷⁷“Part I – Councilmember Jara’s Testimony in Voting Rights Lawsuit Provides Insight Into Her Ideas,” *Santa Monica Lookout*, January 29, 2019. Available at [https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2019/February-](https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2019/February-2019/02_01_2019_PART_I_Councilmember_Jaras_Testimony_in_Voting_Rights_Lawsuit_Provides_Insight_Into_Her_Views.html)

[2019/02_01_2019 PART I Councilmember Jaras Testimony in Voting Rights Lawsuit Provides Insight Into Her Views.html](https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2019/February-2019/02_01_2019_PART_I_Councilmember_Jaras_Testimony_in_Voting_Rights_Lawsuit_Provides_Insight_Into_Her_Views.html). “PART II: Councilmember Jara’s Cross Examination in Voting Rights Lawsuit,” *Santa Monica Lookout*, February 4, 2019. Available at [https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2019/February-2019/02_04_2019 PART II Councilmember Jaras Cross Examination in Voting Rights Lawsuit.html](https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2019/February-2019/02_04_2019_PART_II_Councilmember_Jaras_Cross_Examination_in_Voting_Rights_Lawsuit.html).

⁷⁸Maria Loya, “Pico Neighborhood Residents Deserve an Uncompromised Voice on the City Council,” *Santa Monica Lookout*, January 23, 2019. Available at [https://www.surfsantamonica.com/ssm_site/the_lookout/letters/Letters-2019/01_23_2019 OPINION Pico Neighborhood Residents Deserve An Uncompromised Voice on the City Council.html](https://www.surfsantamonica.com/ssm_site/the_lookout/letters/Letters-2019/01_23_2019_OPINION_Pico_Neighborhood_Residents_Deserve_An_Uncompromised_Voice_on_the_City_Council.html).

⁷⁹Declaration of Dr. Jeffrey B. Lewis, February 28, 2019. Available at [https://www.santamonica.gov/Media/Default/Attorney/Election/4.%202019.02.28%20No.%20BC616804%20-%20Dr.%20J.B.%20Lewis%20Dec%20ISO%20Ex%20Parte\[2\].pdf](https://www.santamonica.gov/Media/Default/Attorney/Election/4.%202019.02.28%20No.%20BC616804%20-%20Dr.%20J.B.%20Lewis%20Dec%20ISO%20Ex%20Parte[2].pdf).

⁸⁰https://www.santamonica.gov/Media/Default/Attorney/Election/2019.3.6_Order%20denying%20ex%20parte%20application%20to%20stay-1.pdf.

⁸¹Relevant documents are at <https://www.santamonica.gov/Media/Default/Attorney/petitionforwrit.pdf>; https://www.santamonica.gov/Media/Default/Attorney/Election/B295935_Stay%20Order_City%20of%20Santa%20Monica.pdf; <https://www.santamonica.gov/Media/Default/Attorney/Election/20190327.OrderGrantingWrit.pdf>.

Lewis analysis which had not been presented at trial (since the trial occurred before the 2018 election).⁸² The existing council could continue to function after August 15, 2019.

On April 29, 2019, the defense asked the Court of Appeal to grant “calendar preference.” Specifically, it asked that the appeal be decided by July 10, 2020 so that the November 2020 election for city council could be held on time. The request conceded that the City could hold a district-based election absent a decision on the appeal, but the City did not want to do so. Accompanying documents complained that the defense had asked the plaintiffs’ attorneys whether they would object to the request for calendar preference but hadn’t received a response.

Shenkman responded saying that after an email exchange on the issue, it was the defense that hadn’t communicated. But, in any event, there was no objection on the plaintiffs’ side to calendar preference. So, both sides agreed that calendar preference was desirable, even while disagreeing on whose fault it was that communication broke down. And on May 6, 2019, the Court of Appeal agreed to decide the case sufficiently in advance of the November 2020 election.⁸³

At this writing, there the substantive matter rests. The appeal will be decided by July 10, 2020. Whether the City would in fact go forward with a district election in 2020 if it loses the appeal, or whether it would instead attempt to delay and try for further appeals remains to be seen.⁸⁴ In the meantime, the plaintiffs’ attorneys submitted a tally of about \$900,000 in out-of-pocket expenses which the defense argued should be reduced or even entirely struck on technical grounds. In due course, if the plaintiffs ultimately prevail, the court will decide on what should be reimbursed.⁸⁵

Apart from the \$900,000, of course, would come the much larger sum of reasonable fees for bringing the case to court. The plaintiffs’ attorney requested over \$21 million as reasonable fees. They note that the defense attorneys were surely getting major payments and that they had to devote similar efforts to match the defense.⁸⁶

⁸²Relevant documents are at

[https://www.santamonica.gov/Media/Default/Attorney/Election/1.%202019.02.28%20No.%20BC616804%20-%20Ex%20Parte%20Application\[4\].pdf](https://www.santamonica.gov/Media/Default/Attorney/Election/1.%202019.02.28%20No.%20BC616804%20-%20Ex%20Parte%20Application[4].pdf);

<https://www.santamonica.gov/Media/Default/Attorney/Election/Motion%20to%20Strike-Lewis.pdf>;

<https://www.santamonica.gov/Media/Default/Attorney/Election/20190321.OppositiontoPetition.pdf>.

⁸³The relevant documents are at

<https://www.santamonica.gov/Media/Default/Attorney/Election/MotionCalendarPreference.pdf>;

<https://www.santamonica.gov/Media/Default/Attorney/Election/ResponseCalendarPreference.pdf>;

<https://www.santamonica.gov/Media/Default/Attorney/Election/ReplyISOCalendarPreference.pdf>;

https://www.santamonica.gov/Media/Default/Attorney/Election/20190506.B295935_Order_CityofSantaMonica.pdf.

⁸⁴After losing the initial decision, the City posted three short videos by Mayor Glean Davis giving its rationale for the appeal. See

<https://archive.org/details/Glean3WhatMakesSantaMonicaDifferentThanOtherCitiesWhoHaveComeUnderThisLawsuit>.

⁸⁵Relevant documents are at

<https://www.santamonica.gov/Media/Default/Attorney/Election/Memo%20of%20Costs.pdf>;

<https://www.santamonica.gov/Media/Default/Attorney/Election/Motion%20to%20strike%20or%20tax%20costs.pdf>.

⁸⁶The fee request was based on documented hours of work by the various attorneys, multiplied by hourly rates, and further multiplied by a “lodestar” factor which is used in California in such cases and is supposed to represent

The fee request of the plaintiffs came shortly after the Santa Monica city council had announced budget cuts for various programs, citing fiscal constraints. Thus, the City was put in an uncomfortable position. It had refused to release any information on the fees it was paying to its defense attorneys. If it continued to do so, it couldn't argue that they were receiving less than \$21 million. Or it could release the information on its costs so far. But whatever it had paid, even if less than \$21 million, the total had to be a big number. And the appeal would cost still more.

Where Does It Go from Here?

"...Some legal experts and critics contend that, by pushing cities to by-district elections, Shenkman inadvertently has exposed the California law to court challenges that could ultimately undermine its purpose, a point that he disputes."

*Los Angeles Times report*⁸⁷

By itself, the kind of governance Santa Monica ends up with as a result of the litigation is just a local issue involving one city with a population of less than 100,000. But if, after appeals are exhausted, the final result is district elections, it is likely that other California jurisdictions will fall into line. Shenkman has voiced confidence that the appeal will ultimately affirm the lower court ruling. He indicated that he had heard that city manager Rick Cole said that the strategy of the City is to get the case before a "Trump judge."

Of course, the assertion by Shenkman of what Cole may have said is the height of hearsay. The city council gets its legal advice behind closed doors. Whatever strategies the City's attorneys have discussed with the council, the city attorney, or the city manager is unlikely to become public anytime soon.

Shenkman further stated at a neighborhood group meeting in December 2018 that if a "Trump judge" is the strategy, the City's problem is that the first "Trump judge" the case will run into in the course of appealing is at the U.S. Supreme Court, and he doubts that the Supreme Court would take jurisdiction.⁸⁸ But that point is not clear. The Ninth Circuit, which would hear such a case before it got to the Supreme Court (assuming the Supreme Court took it), now has several sitting "Trump judges."⁸⁹ At this writing,

the difficulty of the case. See

[https://www.santamonica.gov/Media/Default/Attorney/Election/2019.6.3_Notice%20of%20Motion%20and%20Motion%20for%20Attorneys'%20Fees\[1\].pdf](https://www.santamonica.gov/Media/Default/Attorney/Election/2019.6.3_Notice%20of%20Motion%20and%20Motion%20for%20Attorneys'%20Fees[1].pdf);

[https://www.santamonica.gov/Media/Default/Attorney/Election/Decl.%20of%20Margaret%20M.%20Grignon%20ISO%20Fee%20Motion\[1\].pdf](https://www.santamonica.gov/Media/Default/Attorney/Election/Decl.%20of%20Margaret%20M.%20Grignon%20ISO%20Fee%20Motion[1].pdf);

<https://www.santamonica.gov/Media/Default/Attorney/Election/Decl.%20of%20Barrett%20S.%20Litt%20ISO%20Fee%20Motion.pdf>.

⁸⁷Benjamin Orestes, "Court battles could test constitutionality of California voting rights law," *Los Angeles Times*, March 3, 2019. Available at <https://www.latimes.com/local/lanow/la-me-ln-santa-monica-california-voting-rights-act-20190303-story.html>.

⁸⁸Audio recording of meeting of Northeast Neighbors, December 3, 2018 at <https://archive.org/details/NENeighborsDistricting1232018>.

⁸⁹Ross Todd, "Trump Gets a 4th Judge Appointed to 9th Circuit," *National Law Journal*, March 26, 2019. Available at <https://www.law.com/nationallawjournal/2019/03/26/trump-gets-a-fourth-judge-appointed-to-ninth-circuit/>.

the former mayor of Poway, a city which was forced to switch from at-large to district voting, also has an appeal going to the Ninth Circuit.⁹⁰

In addition, Shenkman suggested in response to a question at the same meeting that if Santa Monica voters want to halt the appeal, their only option is to mount a recall election against members of the city council. If such a recall, or a credible threat of one, caused a majority of council members to drop their resistance and accede to district voting, that decision would short-circuit the appeal. It would avoid rulings by “Trump judges” and it would produce a monetary settlement with Shenkman and his associates. Presumably, Residocracy or some other Santa Monica group could attempt a recall. But at this writing, no such moves have occurred.

The city council’s rationale for not switching to districts and expending large sums to defend the current at-large system, apart from all the legalisms, is that – in the words of Mayor Gleam Davis, “...Districts will break up that solidarity of interests and create little Balkan states. They will start to compete against each other and not pull in the same direction.”⁹¹ But that statement is self-contradictory. If there were a “solidarity of interests” across neighborhoods, then they would “pull in the same direction” *regardless of voting systems*. You can argue that in the end it is a Good Thing if local differences of interests are suppressed for the benefit of some notion of the common good. But you can’t argue that interests are both different and uniform, as the mayor seemingly does.

In the end, the most reasonable interpretation of the council’s decision to press on with the legal fight is that of simple self-preservation. Perhaps some of the current council members might succeed in staying in office under a switch to districts, but not all seven. With access to Santa Monica’s ample treasury, they have essentially unlimited resources to carry on the litigation. They might be right that Santa Monica would be better off with the current at-large system than with districts. They might well believe that they are doing an excellent job, superior to anything that would result from districts. But their decision to fight on (and on) is not plausibly solely a matter of civic do-goodism. Only saints sacrifice their self-interest for higher principles. The City of Santa Monica is named after a saint, but sainthood generally does not extend to its local politics, nor to the politics of any city.

At this writing, the key Santa Monica interest groups have no particular interest in abandoning support for the incumbents on the city council, since those groups depend on them for near-term decisions on zoning, expenditures, pay, jobs, and other policies. The current members of the council are likely to remain in office until at least 2020, so there is little point in antagonizing them. But if it becomes clear, as the appeal continues, that districts are on the horizon, the interest groups will start seeking candidates who can win within the new districts. Old loyalties to the at-large incumbents, such as they are, will begin to melt. Past personal relationships are nice, slogans such as everyone “pulling together” are nice, but economic interests are more compelling.

If Santa Monica switched to districts, the possibility of using old-fashioned door-to-door campaigning, as opposed to the relatively large sums now needed to compete effectively in city council elections, might

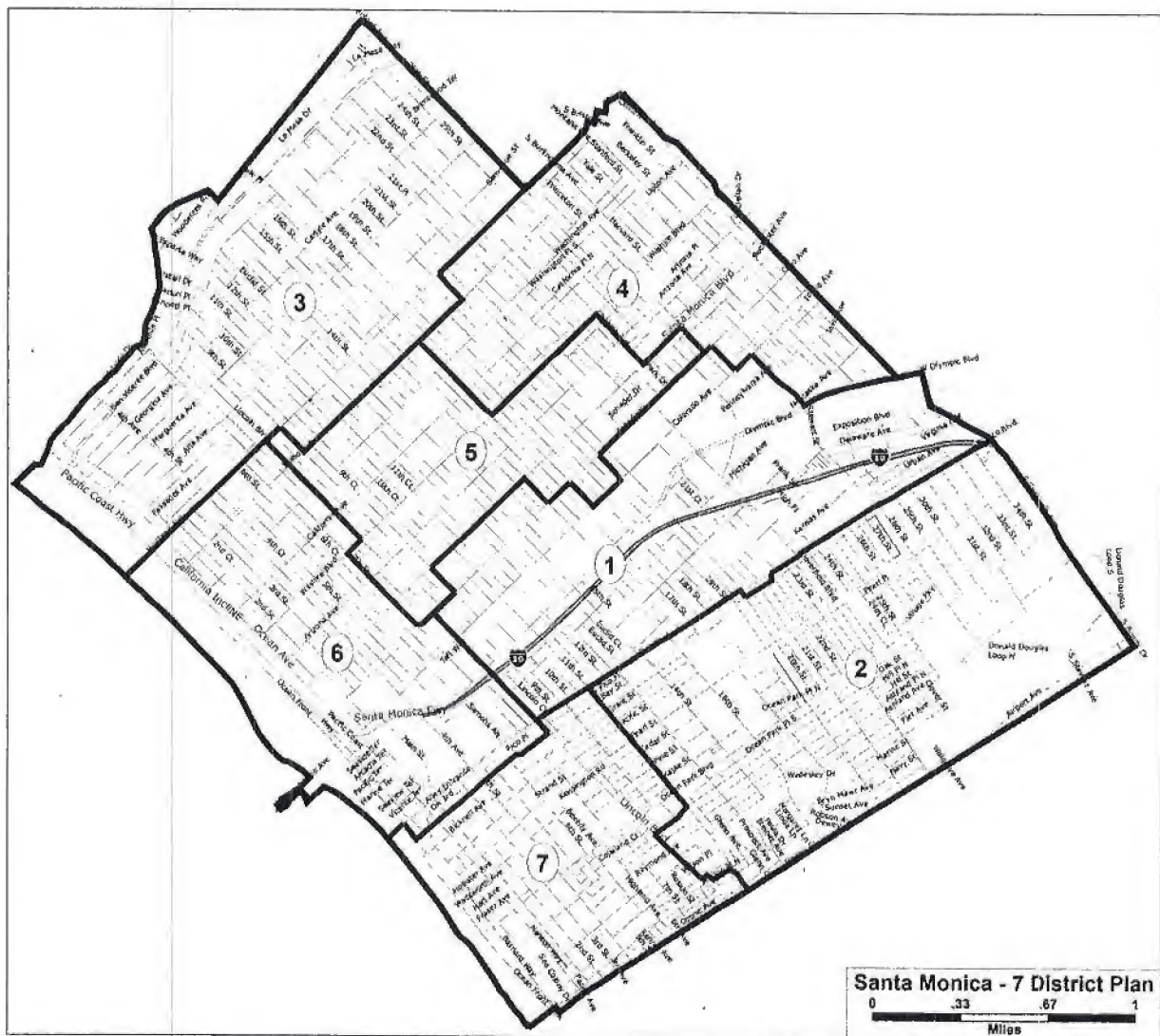
⁹⁰Bob Egelko, “California Voting Rights Act survives legal challenge, but it’s not over,” San Francisco Chronicle, February 6, 2019. Available at <https://www.sfchronicle.com/news/article/California-Voting-Rights-Act-survives-legal-13592466.php>.

⁹¹Quoted in Benjamin Oreskes, “Court battles could test constitutionality of California voting rights law,” Los Angeles Times, March 9, 2019. Available at <https://www.latimes.com/local/lanow/la-me-in-santa-monica-california-voting-rights-act-20190303-story.html>.

(and let's emphasize "might") produce council members more attuned to local neighborhood concerns. It might paradoxically, strengthen the influence of SMRR relative to developers, at least in some districts, since SMRR is an organized group that could conduct door-to-door campaigns. It might also strengthen the influence of the City's public sector unions and the local hotel union (UNITE HERE), all of which also have the human resources for such in-person campaigning. Or the various neighborhood associations in Santa Monica could play a larger role in municipal affairs than they have in the past, assuming they can mobilize their members. However, it might take more than one election cycle for new patterns of influence to stabilize as the various groups learn to play by the new rules.

So, would the eventual result of the change in the mix of influences produce a better Santa Monica? There are too many unknowns to answer definitively, and much depends on what you think is "better." Applied to other cities, a switch to districts raises the same questions that apply to Santa Monica, even if the details of local politics and influence are unique to each jurisdiction. The one thing that can be said is that the result of a switch to districts from at-large voting – in whatever city – is likely to be different long-term outcomes, whether better or not.

Appendix A: The District Map



The map above was proposed by the plaintiffs and subsequently incorporated into the decision of Judge Palazuelos. District 1 includes the Pico Neighborhood.

Source: Plaintiffs' proposed seven-district map, November 19, 2018. Available at [https://www.santamonica.gov/Media/Default/Attorney/ex.261 Seven%20District%20Map.pdf](https://www.santamonica.gov/Media/Default/Attorney/ex.261%20Seven%20District%20Map.pdf).

Appendix B: The California Voting Rights Act

CALIFORNIA ELECTIONS CODE SECTION 14025-14032

14025. This act shall be known and may be cited as the **California Voting Rights Act of 2001.**

14026. As used in this chapter:

(a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision:

- (1) One in which the voters of the entire jurisdiction elect the members to the governing body.
- (2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.
- (3) One which combines at-large elections with district-based elections.

(b) "District-based elections" means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

(c) "Political subdivision" means a geographic area of representation created for the provision of government services, including, but not limited to, a city, a school district, a community college district, or other district organized pursuant to state law.

(d) **"Protected class" means a class of voters who are members of a race, color or language minority group, as this class is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.).**

(e) **"Racially polarized voting"** means voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish **racially polarized voting** may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

14027. An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, as defined pursuant to Section 14026.

14028. (a) A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision. Elections conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.

(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class. One circumstance that may be considered in determining a violation of Section 14027 and this section is the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have been elected

to the governing body of a political subdivision that is the subject of an action based on Section 14027 and this section. In multiseat at-large election districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of a protected class shall be the basis for the racial polarization analysis.

(c) The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns are probative, but not necessary factors to establish a violation of Section 14027 and this section.

14029. Upon a finding of a violation of Section 14027 and Section 14028, the court shall implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation.

14030. In any action to enforce Section 14027 and Section 14028, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

14031. This chapter is enacted to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution.

14032. Any voter who is a member of a protected class and who resides in a political subdivision where a violation of Sections 14027 and 14028 is alleged may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.

Source: <http://archive.fairvote.org/?page=1307>.



California Policy Options

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